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THE FEDERAL-AID HIGHWAY ACT OF 1986

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2405

A BILL TO AUTHORIZE APPROPRIATIONS FOR CERTAIN HIGHWAYS IN ACCORDANCE WITH TITLE 23, UNITED STATES CODE, AND FOR OTHER PURPOSES

MAY 20, 1986

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THE FEDERAL-AID HIGHWAY ACT OF 1986

TUESDAY, MAY 20, 1986

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TRANSPORTATION,
Washington, DC.

The subcommittee met at 9:37 a.m., in room SD–406, Dirksen Senate Office Building, Hon. Steve Symms (chairman of the subcommittee) presiding.

Present: Senators Symms, Stafford, and Burdick.

Senator SYMMS. Good morning. The Chair apologizes if he inconvenienced anyone, but we do need more urban roads between south Alexandria and the Nation's Capital. It took me over an hour to go 15 miles.

Senator LAUTENBERG. I had a car like that once, too.

OPENING STATEMENT OF HON. STEVE SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. I am pleased to welcome all of you to the Subcommittee on Transportation's 10th hearing on the 1986 reauthorization of the Federal-Aid Highway Program. The focus of our hearing today is S. 2405, the Federal-Aid Highway Act, of which Senators Stafford, Burdick, Abdnor, and I introduced on May 6. I should note that Senator Murkowski, a former member of our committee, has joined as a cosponsor of the bill.

S. 2405 provides a 4-year reauthorization of the Federal-Aid Highway Program, which is currently authorized through September 30, 1986. It is very important for Congress to approve this or similar highway reauthorization legislation prior to the October 1 deadline. If we fail to meet this responsibility, highway programs in every State will be disrupted, and the costs in terms of lost jobs, increased travel time, reduced productivity, and inflated construction prices, will be staggering, even with only a short delay.

I know that the members of this committee will be working hard to see that we meet that deadline. As I noted, on May 6, the Federal-Aid Highway Act of 1986 provides $52,386,000,000 in new authorizations for the program over the next 4 years.

I am especially proud of the fact that this $52 billion will be apportioned from the highway trust fund and is, therefore, money paid in advance by the Nation's highway users.

The trust fund concept has worked well in the highway program, and I believe it will continue to do so if Congress demonstrates the good judgment and commitment to principle which our constituents demand. Funding levels included in S. 2405 will allow us to spend the revenues to the highway trust fund but with lower oil prices and a cash balance of $9 to $10 billion currently in the highway account of the trust fund, we can and should spend more on the highway program. I believe the highway trust fund could support a program funded at close to $14 billion annually, based on conservative revenue estimates, and I would recommend such a funding level to the committee during our markup of the bill.

In fact, the Highway Users Federation have done some calculations, and Mr. Les Lamm of that organization has indicated to me that $14 billion is too low, so I think we should set the stage that that should be a minimum target that this committee points for.

When Congress voted to raise the Federal fuel and other highway use taxes in 1982, we made a commitment to our constituents that their money would be spent on the construction and the repair of the Nation's highway system. We must keep that commitment or risk losing the trust which has made the highway trust fund and the Federal-Aid Highway Program the finest examples of federalism at work in the Government today.

The needs for highway funding are significant, as I indicated when introducing S. 2405 on May 6. Even if Congress approves a highway program funded at the maximum level the trust fund possibly could support over the next 4 years, the needs for highway rehabilitation construction will continue to exceed Federal funding capacity.

For this reason, the committee will give serious considerations to program changes which increase the authority and spending flexibility of State officials, reduce the number and cost of federally imposed regulations, and provide increased funding capacity at the State and local level. Some of these program changes are included in S. 2405, and others will be proposed during the markup.

The Federal-Aid Highway Act of 1986 is the product of many months of study and negotiations between my colleagues and I on the committee and our staffs. In general, I believe this provision reflects sound economic principles and funding priorities which will serve the public interest. The bill could be made even better, in my opinion, and I will offer amendments affecting funding levels, the DBE program, speed limits and construction costs which I hope the committee will adopt before reporting the bill for consideration by the full Senate.

As we approach the 30th anniversary of the National System of Interstate and Defense Highways, I think it is important to note the tremendous interest in and wide public support for our Federal-Aid Highway Program. Without doubt, our Interstate Highway System is the most beneficial and important public works program undertaken in the Nation's history, and I am proud to be a part of the effort to complete the Interstate System and move our highway program into the 1990's and beyond.

We look forward to hearing from a roster of distinguished witnesses today. The committee is very interested to know what the highway community thinks about the funding levels and program changes included in S. 2405, and we will give very serious consideration to any suggestion about ways in which the bill might be improved. The hearing record will remain open until June 3 for interested parties to submit their written comments.

We have a long list of witnesses this morning, so we will ask them to make every effort to keep their remarks as concise and close to our 5-minute target as possible. I note that the distinguished chairman of this committee, Senator Stafford and the distinguished ranking member of the subcommittee, Senator Burdick, are here.

Senator Stafford, do you have an opening statement?

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator **Stafford**. Mr. Chairman, I do have a very brief one. I am pleased to participate in the Subcommittee on Transportation's final hearing on the reauthorization of the Federal-Aid Highway Program. I was happy to join with the distinguished chairman of the subcommittee, Senator Symms, in introducing S. 2405, the Federal-Aid Highway Act of 1986, which is the subject of our hearing this morning. I want to join in welcoming our witnesses who will be testifying today.

In order to maintain an ongoing Federal-Aid Highway Program, we must complete legislation by October 1, or certainly before the Congress adjourns this year.

Congress' inability to approve the interstate cost estimates on time during the past few years has demonstrated the costly disruption caused by such delays in the highway program. S. 2405 will continue to improve the quality of our highways and bridges that gives the States the flexibility to achieve completion of the Interstate System by 1990, if that is a high priority.

It also gives States the flexibility to determine that their interstate is completed and that interstate for-hire work or primary system projects that are more important than completed interstate segments can go forward. I believe completion of the interstate by 1990 is the most important goal to be accomplished by the Federal-Aid Highway Act of 1986.

This year marks the 30th anniversary of the beginning of the Interstate Construction Program. There is no doubt that construction of the Interstate System has been one of our country's most significant public works accomplishments. The system is now essentially complete, and it is time to move on with preserving the existing Interstate System and addressing other highway needs that have had to wait while the interstate was being built.

Finally, Mr. Chairman, I want to repeat again how important it is to provide the long-term, stable funding so necessary for this program. I hope all those who are concerned about the highway program will work with us in securing long-term reauthorization of legislation this year.

Thank you, Mr. Chairman.

Senator **Symms**. Thank you very much, Senator Stafford. At this point in the record, I would ask unanimous consent that the statement by Senator Bentsen, the ranking member of this committee, be inserted in the record.

[Senator Bentsen's statement follows:]

Opening Statement of Hon. Lloyd Bentsen, U.S. Senator From the State of Texas

Mr. Chairman: I want to thank the chairman of the Transportation Subcommittee, Senator Symms, for holding this hearing on the Federal-Aid Highway Act of 1986. I appreciate the fact that we are offering such a forum to our members and other concerned parties to express their positions on the important issues we are dealing with. I am encouraged by the directions we have taken with this proposed legislation and believe we are about to take the steps necessary to meet the changing needs of our highway system.

Most highway program authorizations expire on September 30, 1986. In order to continue this excellent program, which has produced one of the most successful public works projects in our history, we must extend and adjust Federal-aid highway legislation. Consequently, I have joined Chairman Stafford, Senator Burdick, ranking member of the Transportation Subcommittee, Senator Abdnor, a valued member of the Transportation Subcommittee and you, as subcommittee chairman, in cosponsoring S. 2405, The Federal-Aid Highway Act of 1986.

S. 2405 is a very good bill. It meets the tight budget constraints imposed by deficit reduction requirements. It provides more funding discretion to the States by allowing greater flexibility in moving funds within and between program accounts. Each State will be better able to meet its own particular needs as a result. The bill permits private donations of right of way to be credited toward the State's matching share, thereby encouraging the development of a private-public partnership. My minimum allocation provision is amended to include calculation of both formula and discretionary funds, providing a more accurate assessment of the minimum return to each State from the highway trust fund. Also, I am happy to say that my Wildflower amendment promoting the use of native flowers on highway rights of way is in this bill.

The bill reprsents the continuation of a well established commitment to complete the Interstate Highway System. We have a come a long way, but we must exercise the determination and the will power to complete the task. S. 2405 provides the means by which we can do the job.

Thank you, Mr. Chairman.

Senator Symms. Senator Burdick, do you have an opening statement?

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator Burdick. Yes, Mr. Chairman. I am pleased to join my colleagues today for the reauthorization of the highway program. This morning, witnesses will have the opportunity to testify on the committee's bill, S. 2405.

A major problem that this bill tries to deal with is the budgetary imbalance created by Congress when it placed the obligational limitation far below authorizations. Since October 1, State highway agencies have received four different levels of contract authority due to various congressional activities to control the deficit.

This yo-yo syndrome is not appreciated by State highway agencies. North Dakota, for example, was promised $89.5 million for fiscal year 1986, yet it received contract authority to spend only $75.4 million. My State ranks No. 1 in obligation of funds in relation to fiscal year appropriations. The State highway commissioners are interested in getting the show on the road.

I agree and will work with my colleagues to offer an amendment to increase the obligation ceiling by $650 million to $1 billion each year in order to implement the Senate resolution. That amendment will be consistent with the May 1 sense of the Senate resolution. The Senate agreed that a reasonable portion of the highway trust fund balance should be expended over the next 3 fiscal years. By the end of fiscal year 1989, obligations from the trust fund would be required for equal revenues deposited in the highway trust fund, that is, $12.8 billion plus interest. Under this spending pattern, the balance should drop to $3 to $4 billion.

In addition, I suspect that some interest groups are anxious to increase the authorization level of various categories. However, it is still too early to set these limits because the Senate needs to know how the House Public Works Committee will write its bill to take care of its special concerns.

I would encourage my colleagues, State highway agencies, and concerned industry representatives to support the highest level feasible for apportionments and obligational ceiling over the next 4 years. However, I suspect that the most appropriate place to set these levels would be in conference with the House.

Because of the time limit imposed, I will submit any questions I may have in writing to the witnesses. In addition, I would like to insert a letter from Senator Bumpers into the record. Senator Bumpers is interested in receiving funding for a special projects program in Arkansas.

Thank you, Mr. Chairman.

[The letter referred to follows:]

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

May 20, 1986

The Honorable Steven D. Symms
Chairman
Subcommittee on Transportation
Committee on Environment and Public Works
SH-415
Washington, D.C. 20510

Dear Steve:

Last July I appeared before the Subcommittee on Transportation to testify in support of three bills of great importance to the people and economy of Arkansas. S. 383 would authorize a highway demonstration project for Waldron Road in Fort Smith, S. 384 would authorize a highway demonstration project at Highway 71 between Alma and Bella Vista, and S. 841 would authorize the use of bridge replacement funds to replace ferryboats, low-water crossings and bridges destroyed prior to 1960.

Now that the Subcommittee is holding hearings on S. 2405 to reauthorize federal highway programs, I want to take this opportunity to have my continuing interest and support for these important issues included in the record.

S. 383, the Waldron Road project, is greatly needed to alleviate a very serious problem of monumental traffic tie-ups in Fort Smith, which is Arkansas' second largest city. That stretch is one of the most congested areas in the entire state. Accidents are frequent, property damage is heavy and congestion is always great. The city must have relief but because sufficient funds in the state simply do not exist, authorization for funding is imperative.

Likewise, S. 384, the Highway 71 project, continues to be absolutely critical. Improvements on this most important primary road in northwest Arkansas are essential to save lives and to adequately serve the rapidly growing population of the Ozark region of Arkansas and Missouri. My bill will authorize funding to assist the state in building a safer road so that we may reduce the ever-increasing numbers of tragedies that are becoming all too commonplace along this route.

My other bill, S. 841, would not cost anything but would give states greater flexibility by allowing bridge replacement funds to be used to replace ferryboat operations, low-water crossings and bridges built before 1960. These changes would certainly improve safety and transportation for citizens in many rural areas of my state and throughout our country.

These issues continue to be a foremost priority for me and for the citizens of Arkansas, and I wanted to take this opportunity to urge the Committee again to include these projects in S. 2405 when the Committee marks up that legislation. I have been assured by the staff of the Subcommittee that witness testimony from last summer will be considered along with that given today when the Committee marks up the bill. I am enclosing a copy of that testimony and I ask that it be included in the record of the May 20 hearing.*

Thank you very much for your consideration and assistance.

Sincerely,

Dale Bumpers

Dale Bumpers

DB:dg

Enclosure

✓cc: The Honorable Quentin N. Burdick
Ranking Minority Member
Subcommittee on Transportation

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*See "The Federal-Aid Highway Program" hearings before the Subcommittee on Transportation, Committee on Environment and Public Works, U.S. Senate, July 10, 1985 at page 64.

Senator SYMMS. Thank you very much, Senator Burdick.

Our first witness this morning is a very valued member of the Environment and Public Works Committee, Senator Lautenberg from New Jersey. Senator?

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Mr. Chairman, members of the committee, thank you for the opportunity to appear before the Subcommittee on Transportation to testify on S. 2405. This legislation is going to have a major impact on national transportation policy well into the next decade.

On May 6, with others, Mr. Chairman, you introduced S. 2405 to reauthorize the Federal-Aid Highway Program. A bill must be enacted by October 1, when the authority granted in the STAA of 1982 expires. I support the reauthorization of the highway program and commend your early attention to this legislation.

Although I no longer serve on this subcommittee, as a member of the Environment and Public Works Committee, I will have the opportunity to work with you on this legislation. I chose to testify before the subcommittee this morning to make two things clear: One is that I strongly support the Federal Highway Program and some of the improvements to it contained in the bill.

I strongly oppose the provisions in this bill which would strike at the heart of federally-assisted mass transit programs.

My message to the subcommittee is straightforward: We should not saddle the highway bill with a controversy that will inevitably accompany attempts to gut mass transit. If there is a problem that has to be addressed in the highway program, let's address it. But don't do it at the expense of our mass transit program.

Mr. Chairman, I have strongly supported the Federal-Aid Highway Program while serving on this committee. In fact, during consideration of the budget reconciliation language, I opposed artificially low expenditure caps on obligations from the highway trust fund. The trust fund is financed by user fees, with taxes. These revenues are dedicated to transportation improvements and cannot be used for any other purpose. Taxes paid into the highway trust fund should be used for the purpose Congress intended.

I have also supported the administrative approval of the ICE, which is included in S. 2405. That is necessary to avoid the intolerable disruptions in the State highway programs occasioned in the past by congressional inability to approve ICE in a timely fashion.

But today, Mr. Chairman, I am here to state my opposition to section 129 of S. 2405, a section which must be removed. This provision destroys any semblance of a balanced national transportation policy. It is a slap at mass transit initiatives approved by the Congress in 1982. It is unwarranted; it is wrong-headed; and it is an arrow aimed at the heart of mass transit systems across this Nation. It doesn't belong in this bill, and frankly, I think it would cripple it.

In 1982, the Congress rid mass transit of its designation as a stepchild of a national transportation policy. The STAA set aside 1 penny of the 5-cent increase in the Federal gasoline tax for mass transit. It created a program at UMTA funded by the penny dedicated from mass transit to meet the extraordinary capital needs of transit dependent cities and States.

Section 129 turns the clock back on national transportation policy. It would grant each State, regardless of its transit need, 85 percent of what it pays into the mass transit account of the highway fund. States securing these funds will not have to spend them for transit services; they could use them to supplement highway programs.

The goal of this proposal is to secure equity in the distribution of mass transit funds. There are alternative and better means to secure that end. If the goal of this proposal is to get more highway funds to highway-dependent States, we should address that, but if the goal is to destroy the penny for transit, this is an objective that I must oppose with every resource available to me.

I recognize that it is important to have a national transportation policy; it is important to use Federal transportation dollars to build and maintain an infrastructure that supports economic activity all over this country and that meets the transportation needs and one that meets the transportation needs of citizens all over the country.

Some of our States rely almost exclusively on highways for moving goods and people, and I support adequate highway funding for those States. Some States need air links to thrive, even if they are not viable on a stand-alone basis. The Federal Government helps out in those cases. Densely populated States and large urban regions depend on mass transit to function. The Congress recognized that in 1982 and has rejected administration attempts to end Federal operating assistance to mass transit since the first Reagan budget was submitted to the Congress.

We should not play off these different modes of transportation against one another and turn national transportation policy into a war between the States and regions of our country.

Mr. Chairman, even when mass transit assistance is counted, New Jersey is a donor State. In 1984, New Jersey paid $39 million into the mass transit account of the highway trust fund and received $54 million in return. That is a bonus of $15 million. But in the same year, New Jersey paid $329 million into the highway account of the trust fund and received only $287 million in return. That is a debit of $42 million. So my State is a net loser. We contributed $27 million in transportation moneys to the rest of the States last year at a time when our own highway and mass transit needs are not being met. We are floating bonds and raising fares to cover our needs.

This is not a one-time contribution. Historically, New Jersey has been a net loser under the highway trust fund. Over the life of the fund, New Jersey has paid in $1 and received 86 cents in return. New Jersey has received no benefits from the 85-percent minimum allocation under the highway program. We have been too rich to be poor and, as it were, too poor to be rich. Adoption of an 85-percent minimum for the mass transit program will make New Jersey a two time loser.

The Governor of New Jersey is supportive of the efforts at the National Governors' Association to end the Federal gasoline tax and leave these matters to the States. That is the kind of reaction you are going to see if the highway legislation this year further aggravates the situation for donor States. Some States will say, "Let's just end the highway trust fund; we will take care of ourselves from the revenues that we raise in our States."

Mr. Chairman, proponents of eroding the penny dedicated to mass transit try to argue that their proposals mirror the highway program. They say section 129 is designed only to ensure that each State gets at least 85 cents back on each dollar it pays into the mass transit account of the highway trust fund, similar to the 85-percent minimum allocation guaranteed by the highway program.

I want to strongly contest that argument here today. The argument, frankly, is a red herring. The proposal to siphon off money from the penny of the gas tax dedicated to mass transit cannot be fairly compared to the 85-percent minimum in the highway program for two reasons. First, the 85-percent minimum in the highway program does not redistribute funds from one State to another.

Under the highway program, funds are allocated to States by formula for each type of federally-assisted highway project. Once funds are allocated, if a State does not receive a return of 85 cents on the dollar, it is allotted additional funds to meet this threshold. Funds are not taken from one State and given to another. All States get funds by formula. Then some States get even more, to bring them to a minimum of 85 cents on the dollar.

This 85-percent minimum requirement in the highway program bears no resemblance to the proposed change in S. 2405 affecting mass transit funds.

The change in mass transit allocations proposed in this bill does rob Peter to pay Paul. It does redistribute funds between the States. It will take mass transit money from States with heavy transit dependence in New Jersey, New York, Oregon, Georgia and others and redirect it to other States, regardless of their transit needs and regardless of how favorable their draw on the highway trust fund is already.

Senator SYMMS. I hate to interrupt the Senator, but I hope you can expedite your testimony. We have a long list of witnesses this morning.

Senator LAUTENBERG. Mr. Chairman, I am willing to end it here. I would ask that the full statement that I have be inserted into the record, and I would close with a paragraph and say at the same time that we are tinkering here with something that has the semblance of prevailing as a national transportation policy, when we look at States like North Dakota that needs highway funds, we also look to a supplier of buses for the State of New Jersey, lots of buses, and all of the States are affected by the decisions that were we are making.

So I urge in the strongest possible terms that the Congress look for an alternative if there is to be support for more mass transit funding for a small community, or if you need to get certain highway funds to more States. To persist with a raid on the mass transit account would permit needless controversy and delay and consideration of the highway bill.

It is in everyone's interest that this be avoided. Thank you, Mr. Chairman.

Senator SYMMS. Thank you very much, Senator, for an excellent statement, which I agree with in part but not in the whole, as you might guess.

The next witness is Senator Chic Hecht from Nevada.

Senator Hecht, welcome to the committee. Glad to have you here.

STATEMENT OF HON. CHIC HECHT, U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman, members of the committee. I want to take this opportunity to testify today on an issue of considerable interest to the people of Nevada, who have led the Nation on this issue, and the entire United States, the 55-mile-per-hour speed limit. Since I have testified before on this issue, my remarks will be brief and to the point.

Mr. Chairman, as your committee begins its very valuable work to reauthorize our Nation's highway program, I hope you will take a long, overdue look at the state of the 55-mile-per-hour law and realize that the law today is a joke and it must be changed. Fewer than 25 percent of America's drivers comply with 55. The average national speed is calculated to be 66 miles per hour, and this deluge of noncompliance now finds many States threatened with the uncomfortable prospect of losing highway construction money because they can't enforce 55.

Put quite simply, the 55-mile-per-hour law is ignored, it is unenforceable and it is no longer needed. We are all aware that when the 55-mile-per-hour law was passed, the United States was experiencing a period of national crisis. But the energy crisis is over. There is also no question that upon enactment of 55, highway fatalities decreased 15 percent.

But it is an equally established fact that over the life of 55, motorists have continually driven faster, and, contrary to the speed kills argument, highway fatality rates have actually declined. In fact, for numerous reasons, America's fatality rate is lower today than for the period immediately following enactment of 55. Obviously, linking speed to fatalities does not stand the test.

One other reason for changing the 55-mile-per-hour speed limit, and I think the most important reason, Mr. Chairman, is the simple matter of States rights. Upon placing 55 on the books, the Federal Government, once again, entered into the private lives of each and every one of us. Washington stepped in to tell us what we could and could not do, and even more distressing, Mr. Chairman, the Federal Government threatened to take away highway funding if States failed to enforce 55. At a time when we are placing premier emphasis on returning government back to the people, Congress continues to maintain a law that smacks of unneeded intrusion into our daily lives. This must be changed.

Mr. Chairman, I could go on and on, but I think it is quite clear where I stand. Early last year, I introduced legislation, S. 329, which would modify the 55-mile-per-hour law by returning to the States the right to set speed limits on certain roads and highways. I would like to see that legislation incorporated into this highway reauthorization bill.

Others in the Senate and House have offered similar legislation, which I think reflects the level of interest in this issue. Congress must act to change the 55-mile-per-hour law once and for all, and I urge your committee to take that opportunity this year. Thank you, Mr. Chairman.

Senator SYMMS. Senator, thank you very much for a very direct and concise statement. It so happens that I am happy to be a cosponsor of your legislation, and it will be the chairman's intention to make an effort to attach that to the bill in committee. In the past, we haven't had the votes in this committee.

I will join with the Senator, if we don't get it attached in committee, on the Senate floor to attach it. I think you are absolutely correct, and I think that it should be done and we should settle this issue right now. Sixty-five is certainly reasonable.

Senator HECHT. I thank you very much for your consideration.

Senator SYMMS. Senator Burdick, any questions?

Senator BURDICK. No; thank you.

Senator SYMMS. Thank you very much. Our next witness is a former distinguished member of this committee, Senator Gorton, the senior Senator from the State of Washington.

Senator, welcome to the committee.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Thank you, Mr. Chairman. I have a relatively brief oral statement. I also have more detailed written testimony which I would appreciate being included in the record.

Senator SYMMS. Without objection, your entire statement will be part of the record.

Senator GORTON. I do appreciate this opportunity to testify on the Surface Transportation Reauthorization Act about two issues which are of great concern to me and to the people of my State: Reforms to the 1965 Highway Beautification Act and to section 129 of the Surface Transportation Reauthorization Act, which alters the distribution of mass transit assistance.

I have been involved in billboard reform since 1961, when I was a member of the Washington State House of Representatives and helped to write the law restricting billboards on interstate and scenic highways. It is one of the best such laws in the United States. Last July, I introduced S. 1494, the Highway Beautification Act Amendments of 1985. The bill is also cosponsored by two members of this committee, the Senator from Rhode Island, Mr. Chafee, and the Senator from New York, Mr. Moynihan.

The purpose of this bill is straightforward: To restore the original commitment of Congress to beautify our Nation's highways by effectively controlling the burgeoning numbers of billboards that spoil the varied and splendid landscapes which we, as a nation, are privileged to view by reason of our vast system of Federal highways.

Twenty-one years after the enactment of the original Highway Beautification Act, we cannot celebrate its success. Instead, the act has accomplished exactly the opposite of the original intention of Congress. Rather than slowing or reversing the growth of the numbers of billboards that are built along the highways, loopholes in the act have resulted in increasing numbers of billboards which assault our senses and mar this country's extraordinary natural beauty. This is especially pronounced in rural areas. S. 1494 would close the rural loophole which has allowed the proliferation of new billboards in such areas.

Investigations by the General Accounting Office reveal that far more signs are going up under the act than are coming down. We now have 14 billboards for every 10 miles of Federal highway. Of those, over 150,000 are illegal or nonconforming. S. 1494 would place a moratorium on all new construction of billboards on Federal highways.

Surely, this is not the legacy we wish to pass on to future Americans, this kind of sign along our highways.

Isn't the use of this type of sign, with which we are all familiar, on appropriately controlled highways, a logo program, just as effective in transmitting the information the traffic public needs? And isn't it a much better complement to our American landscape?

In addition to the widespread construction of new billboards, illegal and nonconforming, GAO investigations also turned up widespread examples of this type of activity: Billboard owners entering State rights-of-way and cutting the vegetation growing there to make their signs more visible. S. 1494 would prohibit that activity.

Perhaps the most pernicious aspect of the present Federal law is the subsidy the American taxpayer is required to pay to the billboard industry. It is no wonder that the present law is so strongly supported by that industry: It has the most to gain from the law staying the way it is.

We have spent $200 million thus far for billboard control. The General Accounting Office estimates that the potential liability for the removal of all nonconforming billboards is nearly $1 billion. This subsidy of the billboard industry is particularly egregious in times of severe budgetary constraints. S. 1494 would remove the requirement for cash compensation and authorize the use of amortization as a mechanism of compensation.

In addition, we have tied the hands of State and local governments, prohibiting them from enforcing their own standards of scenic beauty. Because of the cash compensation requirement for the removal of billboards, local governments must be able to pay billboard owners before they can clean up their highways.

States such as Vermont and Maine were financially penalized under the 1965 act when they chose to eliminate billboards from their highways. Houston, TX, felt so strongly that the proliferation of billboards was harming its economic growth that it decided it had more to lose by having billboards, than paying for their removal. Other governments have not been able to enact stricter billboard regulation because of the costs they would incur under the Federal law. The Federal law should aid rather than hinder local governments for trying to enact billboard reform. S. 1494 would return the ability to regulate billboards back to the State and local governments, where it belongs.

The many serious defects of the present law were amply summarized by Secretary of Transportation Elizabeth Dole, who stated in a letter to me that she agreed "wholeheartedly that the current law is unworkable and in great need of change." Despite the fact that the present law already favors the billboard industry, the House Committee on Public Works has introduced a highway bill which will allow more billboards to receive compensation, thereby increasing the already enormous financial liability of this Nation. The House bill also proposes to make billboard removal an eligible item under the highway trust fund. Clearly, we can find far more worthy causes for our tax dollars than a perpetual subsidy to the billboard industry.

Mr. Chairman, I strongly urge that the committee include the provisions of S. 1494 in the omnibus highway bill it reports to the Senate.

Although my primary purpose here today is to discuss my billboard legislation, Mr. Chairman, I should also like to add my voice to those strongly opposing section 129 of this bill, which alters the distribution of mass transit assistance. As you know, the Banking Committee is considering mass transit reauthorization legislation this year. Any changes in the mechanism by which the penny per gallon for mass transit is distributed should be considered by that committee as part of its normal reauthorization cycle. That committee is sensitive to the concerns of some that the assistance distribution needs to be reexamined. But such a reexamination cannot take place in isolation from other components of the mass transit program.

Furthermore, quite apart from questions of how any changes in that program should be considered, I would have to oppose a change such as that proposed by section 129, which would effectively cripple the Federal Government's ability to address such transit needs. Yes, it is true that the benefits for mass transit do not flow to the States in proportion to their populations or to their tax contributions. Neither do the benefits of agricultural spending, water projects, or most other Federal spending programs. Indeed, that is one reason that we have a Federal Government. The elimination of discretion over how transit assistance funds are best to be spent and its replacement with a formula that is absolutely blind to differences across States in the level of need or the ability to use such funds cost effectively is a serious step backward.

I strongly urge the committee to strike the provisions of section 129 and to allow the issue of distribution of mass transit assistance to be decided in the context of the mass transit reauthorization bill.

Again, Mr. Chairman, I want to thank you for this opportunity to present my views to the committee, and as I have said, I have a more detailed statement which you have already included in the record.

Senator SYMMS. I wish to thank the Senator very much for an excellent statement and welcome him back to this committee any time.

Senator GORTON. Thank you.

Senator SYMMS. Senator Trible, we welcome you to the committee. We are glad you are here this morning.

STATEMENT OF HON. PAUL S. TRIBLE, JR., U.S. SENATOR FROM THE STATE OF VIRGINIA, ACCOMPANIED BY VERNON WASHING

Senator TRIBLE. Mr. Chairman, I thank you very much. I would like to have Vernon Washing, a fellow Virginian and a director of the foundation, join me, with your concurrence.

Senator SYMMS. Do you have a prepared statement?

Senator TRIBLE. I do not, but I promise you a short oral statement.

Mr. Chairman, I am grateful for the opportunity to testify in support of my request to authorize, as a demonstration project, the construction of a scenic parkway along the Roanoke River in Virginia. I know that Senate bill 2405, as introduced, does not include such projects. However, should the committee determine that such projects should be included, I wanted to present the merits of this project to the committee for its consideration.

I am here to request the committee consider the authorization of the construction of a 10-mile road through the Roanoke River Valley of Virginia, intersecting with the Blue Ridge Parkway. When completed, the parkway will extend for a total of 25 miles. The cost of the additional section of that project will be borne by the State and local governments.

Mr. Chairman, the construction of this parkway is a key element and an ambitious conservation, preservation, and beautification project that will encompass 5,000 acres. It is supported by the local governments and by the Commonwealth of Virginia.

The project envisions a major zoo and park which will tell the story of America's first frontier and the journey of Lewis and Clark through the great Midwest and across the Rockies and Pacific. The zoo and information center will tell the story of the Dakotas, Idaho, Montana, Oregon, and Washington.

As you know, the valley of Virginia, the Blue Ridge, was America's first frontier. The American move West was engineered by such western Virginians as Lewis and Clark, Thomas Jeferson, Thomas Walker, Sam Houston, and Cyrus McCormack, the father of Abraham Lincoln.

This parkway will assist us in preserving that precious legacy and telling their story and the story of the West. In addition, construction of the parkway will add to the luster of one of America's premier tourist attractions, the Blue Ridge Parkway.

The park planned here would reside on either side of the Blue Ridge Parkway and would protect the parkway from encroachment by development and will improve access to this great national treasure. It will tell the story of the Blue Ridge Parkway and the entire region through a viable visitors 'center.

There are many other benefits that would accrue, as well. The project will protect the Roanoke River flood plain, an area so heavily damaged by extensive flooding last year. It will lead to the acquisition of thousands of acres on the parkway, enhancing the quality of life and economic roads in Virginia would generate hundreds of new jobs. This Federal funding will leverage a minimum of $25 million in State money to stimulate over $30 million in private investments.

Let me emphasize this undertaking is a true demonstration project. It would develop design criteria for highways and park roads and scenic parkways in urban areas throughout America. Very seldom after urbanization, after development, is an attempt made to build a scenic roadway. But that is the case here. This development could act as a model for similar projects around our country intended to preserve, protect, and increase public access to priceless natural assets.

So, Mr. Chairman, let me say that this project would make a major contribution in history, education, recreation, conservation and research, and I would urge the committee to consider its authorization as you proceed with this important legislation.

I would also add, Mr. Chairman, at this point that Senator Warner has a statement which he has asked me to introduce on his behalf. I would ask that it follow my statement here this morning.

Senator SYMMS. Without objection, it will be included in the record at this point.

[Senator Warner's statement follows:]

STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Chairman and members of the committee, I appreciate the opportunity to join my Virginia colleague, Senator Trible, in bringing to your attention the environmental and economic value of constructing a scenic parkway along the Roanoke River.

I am aware that S. 2405, as introduced, does not recommend any funds for demonstration projects, and I have supported this policy in previous highway reauthorization bills. In past years, however, the Senate has recognized the economic benefits of some demonstration projects, and should this again be the case, I believe the "Explore" project merits the committee's full consideration for demonstration funds.

"Explore" will be a 5,000-acre tourist destination located in the Roanoke Valley in western Virginia—adjacent to our Nation's second most popular national parksite, the Blue Ridge Parkway. This project will consist of a zoological park, a transportation museum, and a visitors center along the parkway depicting the westward movement beginning with the Lewis and Clark expedition commissioned by President Thomas Jefferson, as well as other cultural activities.

My purpose today is to request funds that are essential to the development of this project. The river road and parkway will extend 25 miles from Interstate 81 in Vinton through downtown Roanoke, intersecting with the Blue Ridge Parkway and beyond to the Booker T. Washington National Monument.

It is the first 10 miles of the parkway for which I seek your support for $20 million in demonstration funds.

The remaining 15 miles of the parkway will be constructed with funds from the Commonwealth of Virginia and local governments.

This project is an exmaple of a true partnership between the Federal Government, the Commonwealth of Virginia, the surrounding local governments, and the private sector to invest an equitable share of funds to enhance the visitation of the Blue Ridge Parkway and the Roanoke Valley. The proposed parkway will make available to 1 million tourists annually a visitor's center to educate travelers on all the benefits of the parkway.

Mr. Chairman and members of the committee, I urge your favorable consideration of this project should funding for demonstration projects be approved.

Senator SYMMS. Thank you very much, Senator. We will take a very careful look at that. I particularly am interested in the part where you mentioned Idaho will be included in that.

Senator TRIBLE. And the Dakotas, let's not forget the Dakotas.

Senator BURDICK. Where is this parkway located, on the hogback ridge?

Senator TRIBLE. The parkway would run from the Roanoke River, which encompasses the jurisdictions of the city of Roanoke,

Roanoke County, Finton, and it would run eastward across the Blue Ridge Parkway to Smith Mountain Lake. It is envisioned that it would be 25 miles in all once finally completed, but we are hoping the Federal Government would build 10 miles, the 10-mile segment that would intersect through the Blue Ridge Parkway.

Senator **Burdick**. Thank you.

Senator **Symms**. Thank you very much, Senator. I see the distinguished senior Senator from Hawaii is here, Senator Inouye. I don't see Senator Matsunaga. Is Senator Matsunaga in the room?

[No response.]

Senator **Symms**. Senator Inouye, welcome to the committee. I might tell you that yesterday morning, I was running on the George Washington Parkway wearing a "Support H-3" hat that was given to me in Hawaii. I went by a runner and he said, "What is H-3?" so we will let you tell us about it. We welcome you to the committee.

Senator **Inouye**. I thank you very much, Mr. Chairman. I forgot to bring my cap this morning. I am not on the ball.

Senator **Symms**. I should have worn it for you.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM THE STATE OF HAWAII

Senator **Inouye**. Mr. Chairman, I thank you very much for this opportunity to testify at this hearing. I thank you, Senator Burdick. As you know from the committee's November 6 hearings, the State of Hawaii, together with the Federal Highway Administration, has been trying to build a defense and Interstate Highway, Route 3, for over 25 years.

During this time period, the H-3 highway project has been extensively planned and replanned by the State to take all environmental issues into consideration.

Specific environmental questions raised by concerned groups in the State have been addressed and considerable accommodations have been made. The State has surpassed the requirements of a myriad of Federal and State environmental laws, including the National Environmental Protection Act and the Endangered Species Act, and Mr. Chairman, as you may recall, this tall stack of documents which we have here this morning, including environmental reports and other planning documents, were brought to the committee at the November 6 hearing and were made part of the record.

Mr. Chairman, I am including with my statement today a complete list of the environmental laws complied with and planning and conservation activities undertaken by the State in relation to this project. As this list demonstrates, a great deal of thought and planning has been done by the State to go the extra mile to satisfy all environmental concerns.

Despite this impressive record of filings and accommodation, the H-3 project has been stopped by the Ninth Circuit Court's controversial ruling regarding section 4(f) of the Federal-Aid Highway Act. The court found H-3 to be taking of the adjacent park, even though no land is physically taken by the highway.

Based on the legislative history of this act, however, it seems quite clear that Congress, through 4(f), expresses its intention that a new Interstate Highway should not go through or take from parkway. In the original debate on the 4(f) amendments in 1968, Senator Mansfield spoke of the need to prevent, and I quote, "penetrating through Glover-Archibald Park," while Senator Metcalf of Montana expounded that "national parks are sacrosanct, and we are not going to go through a recreational area."

Indeed, there is no legislative history indicating that Congress intended 4(f) to apply to a case such as H-3 in which no parkland was taken. In fact, Mr. Chairman, with H-3, the opposite is the case. In planning of the H-3 project, the State actually created parkland, the Hoomaluhia Park, adjacent to the highway route, and provided for a buffer zone to assure there would be no development between the two.

This park, which was created by the State, was later expanded to the boundary of the highway route to further protect the undeveloped status of this land. The State also established a common right-of-way for the park and highway and coordinated a hydraulic and landscape design between the two.

Despite this detailed coordination, however, the Ninth Circuit Court found H-3 to be taking of the park. The park which in fact was created by the highway because of possible noise and air pollution. Mr. Chairman, it seems very ironic that by creating a park, the State has run into these environmental problems. If the park had not been created and expanded, there would be no problem, and H-3 would be underway today.

Since the committee's hearing on H-3 last year, there has been a good deal of attention given to the archaeological sites located near a proposed interchange on the highway. A detailed study of these sites was done by the Bishop Museum in Hawaii for the State department of transportation and sent to the Federal Highway Administration.

I think it should be noted that the Bishop Museum is the most knowledgeable institution in the Pacific on the history of our culture and archeology of Hawaii. Upon reviewing this report, the FHWA, at my urging, submitted it to the keeper of the National Register so that a determination of significance and a plan for preservation of these sites could be initiated.

In March, the keeper declared the sites eligible for inclusion in the National Register under criteria D, that is, sites that are likely to yield important historical information and artifacts, but for which preservation is not recommended.

However, the State has agreed to go further than this by volunteering to modify the highway plans to avoid these sites altogether and purchase the private land thereon and provide for the preservation of the key sites.

As criteria D sites, these sites are exempt from section 4(f) by a Federal Highway Administration regulation which was recently upheld in *Belmont* v. *Dole,* a case with remarkable similarities to H-3. The sites are protected, however, through section 106 of the National Historic Preservation Act. With the keeper's recommendation the State is committed, by the 106 process, to consult with their advisory council on historic preservation for the protection of the sites, and plans for this consultation process are being made at this moment.

For this preservation to ever occur, however, the section 4(f) exemption we seek must first be obtained, and without it, these sites will remain on private land with no protection or means of recovery. Mr. Chairman, I would like to reiterate at this point our sincere belief that Hawaii needs H-3 more than ever.

By the year 2000, the traffic level between the Honolulu and the windward side of the island will rise from 90,000 to 120,000 vehicles a day. If this highway is not built, the two roads currently connecting these two points will be completely unable to handle this increased load.

According to the latest projections, the peak traffic period on these roads would increase to 8 hours a day, creating an almost constant traffic jam. Besides the obvious choking effect this would have on Hawaii's transportation flows, it will also have an important defense implication.

As we all know, H-3 connects the naval base of Pearl Harbor and Kaneohe Marine Corps Air Station, and I don't have to tell the members of this committee how ready access between these key military bases is vital to our defense.

Mr. Chairman, I would like to submit at this time for the record letters recently sent to the State DOT by the senior military commanders in the Pacific expressing their unqualified support for H-3.

Senator SYMMS. Without objection. (See p. 81.)

Senator INOUYE. In closing, I wish to stress the importance of timely consideration of our legislation, which has been redrafted to provide for very narrow and qualified 4(f) exemption for H-3, and which this morning, Mr. Chairman, I am pleased to advise you, Senator Matsunaga and I are introducing as a new bill. We request that this new bill be included in S. 2405, the Surface Transportation Act of 1986.

We feel that as a last leg of Interstate Systems, H-3 should be addressed in this year's highway bill. Indeed, if it is not addressed, the chances of this highway ever being built are gravely in danger.

As you know, on September 30 of this year, the deadline for the transfer of H-3 funds will be reached, and absent any action by Congress, this well-planned and much-needed highway will never have been built, and the traffic problems that plague the residents of Hawaii's windward side will likely never be solved.

I don't want this to happen to the people of Hawaii, Mr. Chairman, and I urge the committee to support our request to avoid such a major disappointment for our State. I thank you very much, sir.

Senator SYMMS. Thank you very much, Senator, for a very able presentation of the situation. I appreciate your testimony. We welcome Senator Matsunaga, your colleague, to this committee this morning. Senator, welcome.

You probably haven't heard the Chair say it, but we are trying very desperately to keep everybody within 5 minutes. We are doing fairly well.

STATEMENT OF HON. SPARK M. MATSUNAGA, U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you very much, Mr. Chairman. I am pleased to be here at this committee hearing. I would like to join in the sentiments expressed by the senior Senator from Hawaii, Mr. Inouye, in thanking you and the distinguished members of this committee for once again allowing us to speak in support of a matter vital to the State of Hawaii—construction of the long-delayed H-3 interstate and defense highway.

Senator Inouye has spoken about the unwarranted legal problems which have beset the project, and the good-faith efforts of the State to resolve them. Allow me to touch on two other aspects of this issue: One, the undeniable need; and two, the overwhelming support in Hawaii for the highway in question.

Mr. Chairman, the island of Oahu is divided on its eastern side by a tall mountain range, the Koolau, meaning windward. On one side is the windward community, on the other side, Honolulu, the Central Oahu Plain and Pearl Harbor. Because most of the island's economic activity occurs in the latter areas, and because the windward community is basically residential, there is much commuter traffic over the Koolau Range, in addition to normal commercial traffic.

Currently, all such traffic is serviced by two woefully inadequate highways, both of which lead to Honolulu alone.

For some years, now, as Senator Inouye has said, peak traffic periods have lengthened on these highways to the point where traffic is often at a virtual standstill. This situation, while intolerable now, will be compounded in the future by population pressures. In particular, the windward community over the period 1980 to the year 2000 will experience a 20-percent increase in residents. Because most of these people will be traveling to jobs in the economically and commercially burgeoning south-central part of the island near Pearl Harbor, there will be a subsequent increase in the number of commuters who must travel to and from work in an indirect fashion through the already congested Honolulu corridor.

The pressure on the overburdened trans-Koolau highways will be enormous, and the detrimental effect on traffic flows there will be felt throughout Hawaii's highway system.

Nor will commuters and commercial truckers be the only parties affected. The military, which needs a fast, safe, and efficient highway communication system to integrate its many geographically separated facilities, would not be able to function as rapidly during security crises.

The key to solving both the current and long-term problem is to build the H-3 highway. By drawing up to one-third of the present and anticipated traffic away from the Honolulu corridor and toward Pearl Harbor, highway users will be free to travel more quickly and more directly to their respective destinations. H-3, in fact, is central to the State of Hawaii's overall plan to improve the highway system as a whole. Without H-3, only cosmetic changes can be effected to improve traffic flows in other parts of the island.

Mr. Chairman, the very real need for H-3 which I have discussed is recognized by the vast majority of the citizens and public officials of Hawaii, a fact which belies the many communications you and other Senators have received from a small but active anti-H-3 minority. The litany of support is clear. Allow me to enumerate some evidence of which the committee may not be aware.

First, every H-3 poll conducted by the media and others has shown a consistent 3 or 4 to 1 favorable rating. One recent example was a surprise TV poll conducted in November, when 17,900 viewers called in to support H-3, while only 4,800 called to oppose the project.

Second, last month, a petition, which is in that pile of communications, with upward of 35,000 signatures was submitted to Hawaii's congressional delegation offices. I might add that these signatures were solicited over an extremely short time period and thus represent only a small portion of the spontaneous support H-3 enjoys at large.

Third, last month, 15,000 letters of support were sent or delivered to the committee chairman's office, some copies of which are visible here on the table before you. Mr. Chairman, I ask that the petition and letters be received as part of the official record.

Senator SYMMS. We will put them in the committee file, if it is OK with the Senator.

Senator MATSUNAGA. But still as part of the official record.

Senator SYMMS. Always part of the official record. We don't want to have to pay all the printing costs, but we appreciate the Senator's point, and it will certainly be taken into consideration.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Fourth, H-3 enjoys the overwhelming support of the people most affected. The entire Hawaii congressional delegation and the preponderant majority of State and local public officials have voiced support for legislation authorizing construction of the project. Congressman Akaka, Congressman Heftel, Senator Inouye, and I have all joined Governor Ariyoshi in the State's effort to have the third trans-Koolau highway built. The Hawaii State Senate has adopted a resolution in support of the delegation's effort by a unanimous vote of 24 to 0.

In addition, the majority of Honolulu City Council members have signed a letter reiterating their personal support for construction of H-3. Last week, the commission on transportation, a citizen panel of members appointed by the Governor and confirmed by the State senate, endorsed the highway project. And last week, also, 9 of the 10 elected State and city representatives on the windward side of the island signed a bipartisan letter urging congressional relief in the H-3 matter.

Mr. Chairman, I ask that the documents I referred to also be made a part of the record.

Senator SYMMS. No objection.

[The material referred to has been retained in committee files.]

Senator MATSUNAGA. Fifth and finally, Mr. Chairman, the Department of Defense; the Commander in Chief, Pacific; the Army commander and the director of Civil Defense have stated in letters addressed to the Hawaii Department of Transportation a unanimous opinion that the completion of H-3 is of military importance. From Senator Inouye's testimony, you are already aware of this fact.

Having, I believe, sufficiently established the necessity for resuming construction of H-3 and the attendant widespread support for such action, I would like to take a moment to address two facts.

Senator SYMMS. Could the Senator do it very rapidly, please?

Senator MATSUNAGA. Yes; two tangential issues which have been raised by opponents of the highway. The first is the charge that should H-3 be completed, it would interfere with the island's growth patterns. This is patently false. Without exception, every State and city development plan presumes construction of H-3. H-3, in other words, has been intrinsic to all future development plans in the State. These plans, as you know, are normally the product of years of close analysis and cooperation on the part of experts and public officials.

The second is the charge that Hawaii is better served by a transfer to substitute projects, including improvements to existing highways and the development of a mass transit system. Mr. Chairman and members of the committee, I do not believe anyone would not wish for funding for mass transit or highway improvement projects.

As to the latter, in fact, many of the projects proposed by the city have already been studied or proposed by the State. But a transfer obfuscates the primary need to address the extremely serious trans-Koolau problem, which will not be solved by the city proposal. H-3, which is one of the most pressing transportation issue faced by the State today and which is key to developing an overall plan to improve transportation throughout the island of Oahu, must be given priority.

In closing, Mr. Chairman, I urge you and members of the committee to give due consideration to the demonstrative need Hawaii has of H-3 and the overall overwhelming public and private support this worthy project enjoys.

Thank you very much.

Senator SYMMS. Thank you very much, Senator, both Senators. You have certainly made a very excellent case. I had the opportunity to visit Hawaii last year and flew over the site and looked at it, and I certainly think it confirms everything you said in your statements this morning. I might mention in my visit to Koolau the first thing the commander of the Marine brigade said was, "I understand you are chairman of the highway committee." He said, "We really want to complete H-3. It is really needed for the coordination of the defense of our islands and others in the Pacific. I would encourage you to pursue this."

I think the only real problem that I foresee if we could pass it, would be a money problem, but it will take a period of several years to build it, and we probably would be able to do it, I hope. We, of course, have to get the votes, but I will do what I can to help you, Senators. Thank you very much.

Senator INOUYE. Mr. Chairman, may I request that I be given the opportunity to submit a memo later this afternoon? I just had the opportunity to read testimony that will be presented this afternoon, I believe, in opposition.

Senator SYMMS. Certainly.

Senator INOUYE. This testimony will be filled with incorrect statistics. I think the record should be corrected.

Senator SYMMS. The record will be open. The Senator is certainly welcome to make further comments.

Senator INOUYE. Thank you very much.

Senator MATSUNAGA. Thank you very much.

Senator SYMMS. The next witness is Mr. John Hirten, representing D.G. Anderson, the acting major and managing director of the city and county of Honolulu and Gard Kealoha, trustee. Is Mr. Kealoha here?

The chair would like to announce that sometimes senatorial courtesy makes it a little difficult keeping our colleagues to 5 minutes, but it is my intention to enforce the 5-minute rule. I want to announce that in advance.

Your entire statement will be part of the record, Mr. Hirten, please go right ahead. Welcome to the committee.

STATEMENT OF JOHN HIRTEN, DIRECTOR OF TRANSPORTATION SERVICES FOR THE CITY AND COUNTY OF HONOLULU

Mr. HIRTEN. Thank you, Mr. Chairman and members of the committee. I appreciate this opportunity. Unfortunately, pressing business in Honolulu, including the turning down of a major subdivision in central Oahu due to transportation deficiencies there, has caused the mayor and managing director to remain in Honolulu.

My name is John Hirten. I am the director of transportation services for the city and county of Honolulu. I formerly served with the U.S. Department of Transportation as Assistant Secretary and formerly as Deputy Administrator of Urban Mass Transportation under Presidents Nixon and Ford.

I am testifying on behalf of Mayor Frank F. Fasi and D.G. Anderson, managing director, and the city administration. For your information, the city and county of Honolulu is coterminous with and governs the entire island of Oahu, with over 805,000 citizens, including more than 120,000 military personnel and dependents, plus 80,000 tourists on any one day. We are fully supportive of a comprehensive Federal-Aid Highway Act similar to S. 2405 being proposed by this committee, and I think we need a commitment to finish and fund the interstate highway program.

We probably need more than is being authorized and will be apportioned over the 4-year period. In times of budget restraints, we at the local level of government need the maximum amount of flexibility in federal programs in order to fund those projects which meet local priorities. It is for this reason we oppose the waiver of section 4(f) which is being suggested by our State department of transportation and our two Senators specifically for H-3 in Honolulu.

H-3 is an $800 million freeway fraught with planning, environmental, construction and legal problems, but most of all, H-3 does not deal with Oahu's major transportation needs of today or tomorrow. A decision to withdraw H-3 and substitute other more relevant transportation projects is a Honolulu matter. An arbitrary waiver of the longstanding Federal law directed solely at Honolulu projects would preempt both the legal process and the local political process and deprive us of much-needed funds to address our local transportation needs.

We respectfully disagree with Senators Inouye and Matsunaga that the court was irresponsible and that opponents are obstructionists. In fact, we support the court's opinion that the most prudent and feasible alternative is to not build H-3 but improve our existing facilities with the same funds.

But we, like other cities, do not want to lose money due us for dealing with our transportation problems, and that is why Congress established the substitution program. The $800 million or more it will take to serve the projected 40,000 automobile trips a day in the year 2000 is simply not cost effective. The money should be diverted to build facilities which will serve the leeward side of the island where the majority of the population lives.

We have many highway improvements we need to deal with in our area. Instead of $800 million for H-3, we can improve existing Pali and Likelike Highways at a fraction of the cost in order to handle the relatively minor traffic crossing the mountains from the windward side. This is the most prudent and feasible alternative of which the Ninth Circuit Court spoke when halting any further construction of H-3.

Our concerns for H-3 and our preference for a substitute program are based on the very low cost-benefit ratio of H-3. No other major public works project would be authorized with such a poor cost-benefit ratio; $800 million to carry approximately 35,000 to 40,000 persons a day in the year 2000.

H-3 would benefit only a small percentage of Honolulu's commuting public. The $800 million-plus highway will only relieve crosstown traffic in a very limited way. It will be utilized by only a projected 40,000 automobile trips daily by the year 2000.

On the other hand, the majority of Oahu's population lives on the Honolulu-leeward side and must deal with traffic congestion of a longer duration during peak hours than experienced by windward commuters on the existing Pali and Likelike Highways.

H-3 is no longer consistent with long-term transportation and planning needs on Oahu, and I beg to disagree with Senator Matsunaga. The State and the city general plan do direct the traffic to the central Oahu plain and not to the windward side.

State and city plans and policies call for restricting growth in the limited land area of windward Oahu and encouraging growth in central and southwest plain. Only 120,000 people live on the windward side, while nearly 700,000 residents plus 80,000 tourists on any given day are traveling on the leeward side of Oahu.

Senator SYMMS. Can you wrap it up, please?

Mr. HIRTEN. H-3 does not serve the majority of the windward commuter's needs, and furthermore, there is substantial opposition. Nine elected neighborhood boards representing 33 percent of the population of Oahu have voted to support a substitute program over H-3. In addition, a number of other community organizations and environmental groups have also spoken out publicly in opposition. Two of three newspapers have editorialized against H-3 and the third is in favor of a substitute program if H-3 is not built.

We have submitted this information for the record. We urge the subcommittee to consider the impact of a national waiver on this essentially local matter and respect the more than two decades of community debate which has brought this outmoded project to a hault and give us the funds so we may really address our true transportation programs.

Senator, thank you very much.

Senator SYMMS. Thank you very much. We appreciate your statement and your point of view before this subcommittee. The next witness is Gard Kealoha. Is Gard here?

[No response.]

Senator SYMMS. He is not here, but we will put him at the end. Our next witness is Lester Lamm, who has been before this committee many times with the Federal Highway Administration and is now president of the Highway Users Federation.

Les, welcome to the committee. Glad to have you here.

STATEMENT OF LESTER P. LAMM, PRESIDENT, HIGHWAY USERS FEDERATION

Mr. LAMM. Thank you very much, Mr. Chairman. It is a pleasure to be here. I realize that you will take my full formal statement and have it included in the record, and I appreciate that.

I would like briefly to summarize two points from that statement, which I think are the two critical issues facing the highway industry in this 1986 period. First is timing. It seems to me as I look back that for the last 4 or 5 years, in particular, we have been skating close to a crisis whenever anything has to be done that requires congressional authorization. If you think back with me, Senator, the STAA, passed the final day of the lameduck session in 1982; the 1984 interstate cost estimates being passed 6 months late; the 1985 interstate cost estimates being passed with 48 hours to spare; every single DOT Appropriation Act in the past 5 years, has been several weeks to several months late; and in 1986, we have actually had four separate highway program levels established since the beginning of the fiscal year.

Here we are approaching fiscal year 1987 without even being in as good a position as we were last year at this time, in that we don't have any authorizations for the next year. I am concerned when I look at the congressional work calendar and I see that there are 64 work days left between now and September 30. Also, I note that from the bill S. 2405, which you introduced, and the deliberations which are going on in the House Public Works and Transportation Committee, that both committee approaches may vary widely again this year, as they have in previous years, which indicates that the Congress may need considerable time for conference committee action this year.

So our first point is that we certainly hope and wish that Congress would do everything you can to make this September 30 date, and we say on our behalf that the highway community will do everything we can to support your efforts and make sure that the October 1 deadline is not passed.

The second point is on the program level. Quite simply put, the highway community wants a program that gives us full value for the taxes we are paying. The 1982 STAA increased tax rates to a level which was sufficient to finance the $15 billion program in fiscal year 1986. As you know, this was later reduced by about $2 billion in budgetary promises. This $2 billion is equivalent to roughly 20 percent of the total fiscal reductions for the entire Federal budget which came out under the first year of the Gramm-Rudman-Hollings legislation.

When you consider that the Federal-Aid Highway Program represents slightly more than 1 percent of all Federal outlays, for us to take the equivalent of 20 percent of the total budgetary reductions in any given year, I think, is excessive and would be even more inequitable if that were to continue in future years. Yet, this is just what we see happening with proposed approaches which call for anywhere between $12.75 billion and $12.35 billion in annual obligational ceilings for the Federal-Aid Highway Program covering the period 1987 through 1990.

Either figure, Mr. Chairman, returns us to a level which would be lower than the fiscal year 1983 program. Let me repeat that. In 1990, under the proposed bill, we would be spending less for highways than we did in 1983, even though highway trevel is presently increasing at more than 6 percent per year and may be as high as 40 percent more in 1990 than it was in 1983.

Furthermore, even with the reduced inflation rate we have now, the buying power of $12.3 billion in 1990 might be as much as 30 percent lower than it was in 1983. Mr. Chairman, that would indicate that we would be falling still further behind in our race to provide adequate highway service for our expanding economy. In our opinion, we would lose all the ground in the next 4 years that we have made up during the STAA expansionist legislation of 1983 through 1985.

For the economic well being of the country, we just don't feel that that should happen. We feel that the highway program for 1987 through 1990 should be at the level which you first proposed for fiscal year 1986 which, again, is roughly a $15 billion per year program level with annual authorizations probably at the rate of around $14.5 billion. It appears to us the trust fund revenues, if you add in the current $10.4 billion balance in the highway account, can safely support this size of program without triggering amendment reductions. Even at this level, I would characterize the $15 million program as not being a program increase but being, rather, a freeze, in that it ties to the number which was originally authorized for 1986.

Mr. Chairman, we heard the statements previously made this morning expressing your willingness to propose a higher program level. Let me say that the Highway Users Federation and the highway community in general will fully support and appreciate any efforts which you can do in this regard.

Senator SYMMS. Thank you very much, Les, for an excellent statement.

Senator Burdick.

Senator BURDICK. No questions.

Senator SYMMS. No questions. We understand you have a plane to catch. Your entire statement will be part of the record, and we look forward to working with you as we work this legislation through.

I think your point about the importance of expeditious action on the part of the Congress certainly is one that I am concerned about, and I know Senator Burdick is. We are going to be doing everything on this end to see that we move this legislation rather rapidly and get to conference as soon as possible, so if there are major differences, we can solve them, because you are certainly right on target.

Mr. LAMM. Thank you, Mr. Chairman. We would like to be of whatever help we can during the next 5 months.

Senator SYMMS. Thank you very much.

The next witness is Mr. Tom Larson, secretary of transportation of the State of Pennsylvania and president of the American Association of State Highway and Transportation Officials.

Tom, you have been here before, and we welcome you here again.

STATEMENT OF THOMAS D. LARSON, SECRETARY OF TRANSPORTATION, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION AND PRESIDENT, AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Mr. LARSON. Thank you, Mr. Chairman. I am pleased to be here on behalf of AASHTO. I have a written piece, but I will make brief oral remarks before this committee.

We applaud your initiative of opening a comprehensive, multiyear reauthorization bill which maintains strong emphasis on establishing national highway priorities. You have been leaders in shaping the Nation's transportation program and the policies, and it is evident that you are prepared to continue this effective leadership.

Founded in 1914, AASHTO represents the departments concerned with highway and transportation among the 50 States, the District of Columbia and Puerto Rico. Its purpose is to foster the development and maintenance of an integrated national transportation system. The acting members of AASHTO are the duly-constituted heads and other chief directing officials of the member highway and transportation agencies. And my colleagues and I in AASHTO have been preparing for the reauthorization process for many months now.

We have been attempting to formulate policy statements to clearly state our position on the major issues. Most recently, the association adopted by more than the required two-thirds majority vote of all the member departments and agencies a policy resolution entitled "Congressional Action in 1986 Affecting Transportation." A copy of this resolution is attached to my testimony.

I would like to turn now to some specific issues in the reauthorization. I will be brief. AASHTO strongly encourages Congress to enact multiyear reauthorization legislation promptly, certainly before October 1, 1986.

Regarding funding levels, AASHTO believes that the highway user revenues must be fully returned to the States through timely authorizations, apportionment and spending authority equivalent to all revenues accruing to the highway trust fund. AASHTO applauds a recently passed sense of the Senate resolution calling for increased highway funding levels which would permit spending trust fund receipts, including interest, and a significant reduction in the fund's cash balance over the next 3 years.

The interstate completion and preservation, the twin goals of completing and preserving the Interstate System, remain AASHTO's No. 1 priority. AASHTO is pleased to see S. 2405's commitment to completing the system by 1990, but it does not see how this objective can be achieved with a $3 billion per year authorization.

While AASHTO recommends that the States be permitted to transfer and borrow the 4R funds for interstate completion at their discretion, there is concern that the consolidation of the interstate construction, interstate 4R and primary programs into a single category may be going too far too fast.

Enormous efforts have been made to complete the Interstate System, and, if I could give a personal example, in Pennsylvania we have invested $268 million over the past 7 years just to resolve the controversial design features of six major projects. In all cases, these controversies have been resolved, and by the end of this year, we can have all of the remaining segments in Pennsylvania under construction contract.

But without a crystal-clear congressional commitment to these specific segments presently identified in the interstate cost estimate, I am afraid the momentum to complete it will be lost. AASHTO agrees with Senator Stafford that as long as the interstate construction funds are made available a minimum of one-half percent of these funds should be apportioned to those States which have completed or nearly completed their interstate highways.

Turning to the DBE program, the member departments of AASHTO have been and remain committed to increasing the participation of disadvantaged business enterprises in their program. AASHTO policy statements on DBE's center on the premise that the intent of Congress in devising the DBE program was to develop DBE's to a point where they could compete effectively in the highway construction industry environment.

Specific AASHTO recommendations for the DBE program focus on substantially increasing training and developmental effort and increasing the supply of available DBE's qualified to perform highway work.

AASHTO has formed a special committee on DBE programs to gather, evaluate and report useful information to member departments. The committee is charged with preparing and maintaining a DBE practices manual, which will address, at a minimum, the following areas: certification, acceptable good faith efforts, contract compliance and enforcement and training and financial assistance.

Toll financing: There is a widening gap between highway requirements and available resources. Toll financing is an option which is receiving increased attention as a way to close this gap. AASHTO urges that consideration be given to broadening the authority to implement toll financing so that the States will have this option available to address priority highway requirements.

Finally, the strategic highway research program. AASHTO is very supportive of the inclusion of this program within S. 2405. There is every reason to be confident that the one quarter percent set-aside funding proposed for the strategic highway research program will breath new life into innovation. Considering the $10 million which is spent each year in this country on asphalt repavements, if the result of the SHRP could achieve a 1 percent saving, we would have a new resource of $100 million a year available for investing in the program.

This concludes my testimony, sir.

Senator **Symms**. Thank you very much, Tom, for a very excellent statement. Your written statement will be part of our record. If we have any further questions, we will submit them to you in writing.

We welcome both you, Dan, and John, to the committee.

Mr. Supica.

STATEMENT OF JAMES W. SUPICA, VICE PRESIDENT, ASSOCIATED GENERAL CONTRACTORS OF AMERICA AND PRESIDENT, UNITED CONSTRUCTION CO., ACCOMPANIED BY JOHN GENTILLE, HIGHWAY DIVISION STAFF DIRECTOR

Mr. **Supica**. Mr. Chairman, my name is Jim Supica. I am a highway contractor from Lenexa, KS. As you indicated, I am here in my capacity as the vice president of the Associated General Contractors of America. With me today is John Gentille, our highway division's staff director.

I want to emphasize this morning AGC's very strong support for two amendments that Chairman Symms has indicated he will offer when Senate bill 2405 is considered by the Environment and Public Works Committee; one amendment which will increase the funding levels contained in S. 2405, as introduced, to allow for a 4-year drawdown of the balance in the highway trust fund, and a second amendment to eliminate the DBE program. Reducing the current $10 billion balance in the highway trust fund to the minimum level required for cash flow purposes, as the chairman's amendment would provide for, has long been advocated by AGC. Hence our strong support for the chairman's amendment.

At this point, I would be remiss, however, if I did not again express AGC's belief that highway program authorizations need to be increased to the $23 billion annual level, as documented last year by AASHTO, just to maintain current service levels on the Federal highway system.

Accordingly, AGC continues to believe that the 1986 highway legislation should provide for such funding levels and the user fee revenues required to support those levels.

AGC fully recognizes that for everyone to support such a position is impractical. In response to such statements, AGC must restate that which it has stated to this subcommittee in prior testimony. If, in 1986, Congress decides to not address the issue, it will surely have to address it in conjunction with the next highway reauthorization for these capital investment requirements will simply not go away just because they are not addressed. If unmet, they will only increase and future generations will be penalized because they will, at some point, be forced to foot the much greater highway repair bill they will inherit as a result of this generation's reluctance to make the tough choices which are at hand.

Speaking of tough choices, in introducing Senate bill 2405, the chairman also announced his intention to offer an amendment during committee markup to eliminate the DBE program, stating his belief that, one, in its current form, it violates constitutional guarantees of due process and equal protection of law because it grants disadvantaged status and, thereby, preferential treatment to individuals based solely on their race; and two, in practice, many States seem to have used the program to establish a quota system for the award of Federal-aid highway contacts.

Mr. Chairman, I have had a personal experience in recent days in my own small construction firm in Kansas, where the good-faith efforts certainly are in the eyes of the beholder. The good-faith efforts are being implemented at the State level, in my judgment, as in direct relation to what the bid price is between the low and second bidder and also in direct proportion to the 10-percent quota that they have been mandated to meet by the Federal Highway Administration.

On behalf of AGC's entire membership, which is keenly aware of the harm the DBE program has imposed upon the construction industry and the competitive bidding process, I want to commend and thank the chairman for having the courage to tell it like it is on this issue which is of such great concern to my industry. At AGC, we find it extremely heartening when knowledgeable individuals take the time to look beyond the rhetoric which surrounds the DBE program and to examine, in an impartial manner, whether this program has achieved any measure of success.

We believe that upon examination, any responsible person would reach the conclusion that AGC has reached, which is that the DBE program has been little more than a counter-productive and costly exercise in Government-mandated discrimination.

AGC's submitted statement goes into detail as to why we have reached this conclusion. Respecting the committee's time limitation this morning, I will at this point only reemphasize that which AGC has so often stated before. The DBE program grants special preferences based solely on race, in a manner which fails to provide individuals with the skills and the knowledge that will enable them to obtain a permanent and meaningful place within the construction industry.

AGC believes that the Government would do far better to redirect its energies toward establishing long-term, meaningful educational and training programs for truly disadvantaged individuals, rather than creating quick-fix, counter-productive and costly DBE give-away programs.

Mr. Chairman, AGC believes the time has come for DBE and WBE goals and quota requirements to be eliminated from Federal aid highway contracts, and we will strongly support your amendment on this issue.

I want to thank the committee for this opportunity to present AGC's views.

Senator SYMMS. Thank you very much, Mr. Supica. That was an excellent statement. We appreciate it very much.

The next witness is Mr. Robert E. Hirschman, former chairman of ARTBA. Bob, welcome to the committee. You have been here before, and we welcome you back.

STATEMENT OF ROBERT E. HIRSCHMAN, PRESIDENT, ELDERLEE, INC., AND PAST CHAIRMAN, AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION, ACCOMPANIED BY DANIEL HANSON, PRESIDENT

Mr. HIRSCHMAN. Thank you, Mr. Chairman. I am Robert E. Hirschman, and I am president of Elderlee, Inc., a highway construction firm located in York, PA. As you stated, I am here in my capacity as past chairman of the American Road & Transportation Builders Association, and I am accompanied by the president of ARTBA, Dan Hanson.

ARTBA is a national association with more than 4,500 business firms and individuals from all aspects concerned with the transportation construction industry.

It is very fitting that Congress should reauthorize our transportation program this year, since 1986 marks the 30th anniversary of our National System of Interstate and Defense Highways. The Interstate System, a well-planned network of 42,500 miles of controlled access roadways, is now almost 98 percent open to traffic. It has changed the face of America, contributed greatly to our economy, provided millions of jobs and drawn our Nation closer together.

As observed during the introduction of S. 2405, the funding level proposed in this bill is a good starting point. However, ARTBA is convinced that the authorization level of $13 billion annually for fiscal years 1987 through 1990 simply will not meet our highway capital investment needs.

While $13 billion per year is certainly better than no funding at all, ARTBA strongly believes that $15.5 billion annually is a more realistic level.

Revenue to the highway trust fund will exceed $12.5 billion per year, and interest on the trust fund amounts to approximately $1 billion annually. The current cash balance in the trust fund now exceeds $10 billion. An annual drawdown on this cash balance of up to $2 billion per year, combined with incoming revenue, will provide $15.5 billion in authorizations without any negative impact on the Federal budget.

The total capital needs of our Federal highway program may still not be met, even at this higher level of funding, but it will be a big step in the right direction. I direct the subcommittee's attention to Exhibit A attached to this testimony. ARTBA's specific authorization recommendations for the fiscal years 1987 through 1990 compared with the provisions of S. 2405 are shown by category. Authorizations at these levels will continue a commitment to improve our Federal-aid highway network.

In our written submission, ARTBA addresses in detail several issues of critical concern. While these must be covered in the reauthorization, in the interest of time attached you will find Exhibit B, which summarizes ARTBA's fourteen specific recommendations for 1986 highway legislation.

ARTBA has one other major concern. The contracting community believes that the Disadvantaged Business Enterprises Program has created an unhealthy environment within the Federal-Aid Highway Program. An unreasonable responsibility is placed on the contractor to find qualified DBE's to perform work on projects with a DBE goal established without the input from the contracting industry.

This issue is not new to this subcommittee. Last November, this subcommittee responded to the industry's concerns and conducted an oversight hearing on the DBE program. The results of that hearing were obviously positive. Section 130 of S. 2405 responds to several of the issues raised by ARTBA and others in testimony at that hearing.

The language proposed in section 130 is a very small step forward. It does not, however, solve the immediate and real problem of insufficient DBE firms to meet the 10 percent arbitrary quota established for most Federal-aid highway projects. As I have stated on several earlier occasions, a contractor is not developed overnight or because a special program is created to encourage participation in highway work by a particular segment of our population.

Many States are now reviewing their DBE programs and finding that a small number of firms are continually receiving most of the work. These DBE firms are taking more jobs than they can adequately perform. If the goal of this program is to develop new contractors, ARTBA has been informed by its members that this has not happened in any significant way.

Recognizing the factors relating to DBE availability, ARTBA strongly believes that section 105(f) programs should not be reauthorized. S. 2405 does take two encouraging steps which ARTBA believes to improve administration of the program. First, a requirement for uniform certification of DBE programs by State highway contracting agencies will relieve some of the pressure on prime contractors to find legitimate, qualified DBE firms.

Second, the provision in subsection (e) of section 130 requires that a DBE perform 30 percent of the work with his own forces. This will eliminate the brokering by DBE's that serves no viable function in the construction of a project.

These two steps are encouraging. However, they do not solve the problem, particularly, availability of DBE firms. ARTBA firmly believes that this reauthorization act must address the problem of DBE participation by providing a mechanism which establishes goals based on DBE availability rather than arbitrary quotas.

If a reasonable goal is provided which can honestly be met, the prime contractor is relieved of a portion of the burden that the DBE program carries. If the contractor does not have to worry about a arbitrary quota, which he knows cannot be met, he can bid a project with reasonable certainty that it will be done at the lowest possible price and in conformance with the contract terms.

Of all contractors participating in highway construction work, the specialty contractor has been most impacted by the DBE program.

In the audience today is Karen Stachokis. She is representing the employees of specialty subcontractors. She is concerned, and rightly so, of the severe impact of 105(f) on these employees. She has submitted testimony for the record and would be happy to answer any questions about damage that has done to employees of specialty subcontractors.

ARBTA recommends that language be adopted which limits subcontracting to satisfy the DBE requirement. A limitation of 50 percent would be reasonable. The contractor members of ARTBA believe that DBE firms should have the opportunity to compete in the free enterprise system and welcome their entry into highway work. If DBE participation is to be met, any arbitrary quota is not the answer. The Government must participate by providing training and financial assistance to DBEs wishing to enter the highway market.

The DBE program will be a complete failure, as it has been in the past, if it does not to work in a fair manner for all who participate in the Federal-Aid Highway Program, nonminority as well as disadvantaged individuals. The committee fails to provide a solution because it does not address the issue of adequate numbers of DBEs available to do the work in today's marketplace. ARTBA believes that our suggestions are extremely important. However, ARTBA recommends discontinuation of the current DBE program as the preferable solution. Preference for any group, which is inconsistent with the American free enterprise system, is not acceptable.

In summary, adequate funding is essential in the 1986 reauthorization bill. The subcommittee is urged to authorize the maximum funding possible, $15.5 billion per year. Every consideration must be given to reduce the burden on highway contractors if the DBE arbitrary quotas are not eliminated.

ARTBA suggestions made in response to the committee staff's draft language can go a long way in making the program fair and equitable to all participants in the national highway program. Other costly, nonproductive items, such as the gasohol exemption and the Davis-Bacon provisions as they relate to the Federal-aid highway program should be eliminated.

Thank you, Mr. Chairman.

Senator SYMMS. Thank you very much, both of you. Karen Stachokis' statement can be made a part of the record. (See. p. 187.)

I appreciate both of your testimony this morning, your entire statements will be part of the record.

You mention, Mr. Hirschman, prequalification and certification and the differences. Can you describe the difference between certification and prequalification. What will this accomplish that certification will not accomplish?

Mr. HIRSCHMAN. The certification, I think, as you have listed in S. 2405, would be done at the national level. We think that is a step in the right direction instead of having individual States certify. When you certify by individual states or you certify at the national level, however, you simply certify that to the fact that the man wants to be a contractor and he has the right race and consequently, he is a DBE and you will say he has those qualifications and he is going to run an outfit and therefore, he can bid on DBE work.

When you prequalify subcontractors, you then look at several things. You look first at their financial statement. You look at their banking loan ability, what they can obtain from the banks. In addition to that, the most important thing you look at is experience. To be in our business, which is a tough business, as I have said many times before, we have all of our assets on the line. We have personal endorsements on almost everything, since we are basically family-owned businesses. The only way you develop experience is to be there for a while. If you do not have experience, you cannot expect to be a highway contractor overnite.

It is absolutely ludicrous to take somebody that has no experience in the highway business and then give them a $1 million contract to do highway construction work.

So if you have national prequalification in addition to certification, we think that would help.

Senator SYMMS. Thank you very much. Mr. Supica, did you want to comment on that?

Mr. SUPICA. I would like to comment, instead, Mr. Chairman, on the good-faith effort, the term we have heard so many times, and like so many terms we have picked up in regulations, good-faith effort, for the Senator's staff, I would like to submit a packet of good-faith effort that my firm recently submitted to the Kansas Department of Transportation, when I was a low bidder here just last month, and the bid was denied my firm because they inferred that I did not make sufficient good-faith effort after contacting 55 DBE listed firms; making the awards to subcontractors or was going to make the awards and had utilized them in my proposal and wrote their names in my proposal, all DBE firms who quoted my company as well as all WBE companies who quoted my firm, and yet it was found I did not exercise sufficient good-faith effort.

I submit to you that good-faith effort is what is actually a situation that develops. What is the difference between low and second bidder? What is the difference as far as the quota and the rate that the State is currently meeting, and we are emasculating making the award to the low responsible bidder that has served public works and the highway industry so well over these many years.

It certainly needs the attention of this committee.

Senator SYMMS. I thank you very much. I guess the one thing that might be added to that is that this is at a very extremely high cost to the taxpayer, the highway user who is paying for the work that we are watching being done on our roads and bridges today.

Mr. SUPICA. Mr. Chairman, I think it would be of interest to this committee to request the Federal Highway Administration to submit to you the difference in price between what the low bidder price was and the second bidder when they found the low bidder did not make what is the State's interpretation of sufficient good-faith efforts, and I think we are talking about many, many hundreds of millions of dollars.

Senator SYMMS. Thank you very much, both of you. I appreciate working with both of your very fine associations. I might just say that on this struggle, with respect to highway spending, it is my attitude that if, in fact, this administration and others oppose the higher dollar numbers between $14 and $15 billion, as have been talked about here this morning, then at a minimum, they should support a relaxation of some of these regulations such as DBE's, Davis-Bacon and other things that everyone knows are just an excessive burden on the backs of the taxpayers to pay for the highways, roads, and bridges.

I think that this is a good time to emphasize some of those points. So I thank you very much for your encouragement.

Senator Burdick, do you have any questions?

Senator Burdick. I am trying to be at two committees this morning. It is kind of difficult.

Senator Symms. We appreciate your interest in this. I know that we are glad to have you here any time you can be here.

Senator Burdick. Let me ask of the entire panel, is there any thought of taking the highway program off the budget?

Mr. Hanson. Yes, sir. We certainly endorse the proposal that was expressed in the text of the concurrent budget reconciliation act. One of our 14 ARTBA points stresses this recommendation very strongly. We were very disappointed last year. We thought we had a chance in the U.S. House of Representatives. However, the rollcall was 205 to 222, so there are nine Members over there we have got to convince this year. We think we can do that in the House in 1986, and we would hope that this body would follow suit.

We would like to see all transportation trust funds taken off the line item budget.

Senator Symms. Thank you very much. I appreciate it very much, gentlemen.

The next panel is Robert J. Fobel, legislative representative of the National Association of Counties, and coordinator of the transportation steering committee; and Ross Sandler, commissioner of transportation, city of New York, and the U.S. Conference of Mayors. Gentlemen, we welcome both of you to the committee.

Mr. Fogel, welcome to the committee.

STATEMENT OF ROBERT J. FOGEL, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF COUNTIES

Mr. Fogel. Thank you, Mr. Chairman. I am Robert Fogel of the National Association of Counties. I appreciate the opportunity to testify before your subcommittee today. I will make my remarks brief. This Nation's 3,100 counties are primarily interested in the urban and secondary highway programs and the on-and-off system bridge programs. The bill the subcommittee is considering cuts the secondary and urban programs by $50 million each and cuts the bridge program by $550 million.

Let me simply say that while the cuts in the secondary and urban program appear somewhat small, one needs to view these levels historically in terms of the 1982 Highway Act. NACo supported the 1982 legislation and supported the 4-cent increase in the gas tax for highways, even though there was no increase in funding for the urban program and a very small increase for the secondary program.

We are concerned because the changes in the authorization levels in S. 2405 will put the secondary program back at the pre-1982 Highway Act level, the urban program at the pre-1978 Highway Act level and the bridges program at the 1983 level.

Counties have some serious reservations about section 137 of the bill, the combined road/plan demonstration program. It is likely that many of our members could lose funding for highways in their counties if the State is given absolute control over how the block grants would be spent. Under the present system, at least urban areas over 200,000 receive a pass-through of urban funds.

At a minimum, we would urge the pass-through be retained in the demonstration program or that a hold-harmless provision be included in the highway bill that would guarantee counties no less money under the demonstration program than they would currently be receiving.

NACo continues to hear about problems that counties encounter in receiving a fair and equitable share of secondary road money. According to the Federal Highway Administration, only seven States make available over 50 percent of secondary funds to counties; 20 States make available 50 percent of their secondary funds to counties; and 23 States make no secondary funds available to counties.

We do not take issue with those States like Vermont, which have full responsibility for roads on the secondary road system. What we would like to see in the bill is a provision that requires States to develop a subapportionment distribution system that treats counties in a fair and equitable manner.

There needs to be some Federal monitoring over how the States distribute Federal highway money to local governments. We think at a minimum, the Secretary of Transportation should review and approve each State's distribution system to ensure fair and equitable treatment of local government.

Mr. Chairman, next week, I am going to be in Idaho at the National Road Symposium. I understand you are going to be speaking there, and I am sure whatever I have omitted from my remarks you will hear from the many local officials who will be at that meeting.

Senator SYMMS. I have heard this same thing from them already, as a matter of fact.

Mr. FOGEL. That concludes my remarks. Thank you.

Senator SYMMS. Thank you very much. I may have a question for you in a minute.

Mr. Sandler.

STATEMENT OF ROSS SANDLER, COMMISSIONER OF TRANSPORTATION, CITY OF NEW YORK ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mr. SANDLER. Thank you very much. I am Ross Sandler, commissioner of the New York City Department of Transportation. I greatly appreciate the opportunity to come before this distinguished committee.

I will direct my remarks to four elements of the bill, the FAUS appropriation; the appropriation on Highway Bridge Rehabilitation and Replacement; the interstate substitution programs; and a section 129 provision concerning mass transit funding.

With respect to the FAUS program, FAUS will be provided authorizations of $750 million for each fiscal year 1987 to 1990. FAUS funds are exceptionally valuable to New York and to other cities because of the flexibility which permits them to be spent on local streets, bridge repairs, and mass transit facilities. These include many of our most cost-effective projects. The level of FAUS authorization was not increased when the Federal gas tax was raised by

50 percent in 1982 and funding of other major Federal highway programs was increased proportionately.

Apparently, certain States have not spent their full FAUS apportionments, in contrast to other States, whose FAUS apportionments do not cover their needs.

I would recommend a provision to allow reauthorization of funds from those States which do not spend their full FAUS allottments in those States which can use the money effectively. In addition, I urge that FAUS authorizations not be reduced, but increased in parallel with other Federal-aid highway programs.

Turning to the bridge program, the authorization provided in the proposed legislation would represent reductions in funding for critical infrastructure work involving bridges. Failure to continue or increase funding levels would result in unacceptable delays in upgrading in the Nation's aging infrastructure.

The bridge replacement and rehabilitation program under section 144 will authorize $1.5 billion per year from 1987 to 1990. This amount represents a decrease from previous years' appropriation's which delay the upgrading of many of the Nation's deteriorating bridges. In New York City alone, there are 411 bridges in poor or fair condition, requiring rehabilitation made possible only through continued funding support of the Federal Government.

Now turning to the issue of interstate substitute funding, on this issue, I speak on behalf of the U.S. Conference of Mayors as well as the city of New York. Together, we strongly urge that the authorization level for interstate substitute highway projects be increased to enable all trade-ins to be completed as close as possible to the 1990 completion date for the Interstate System. A higher level of annual authorization is needed because of the heavy volume of trade-ins which have taken place since 1982.

The decision by the State of New York and the city of New York not to construct Westway in Manhattan has reduced the need for interstate construction funds by approximately $300 million annually. Accordingly, this amount can be subtracted from the interstate construction authorization and should be, we urge, added to the interstate substitute authorization. This would add $300 million to the approximately $700 million authorized annually by the 1982 act, which would give $1 billion annually to this category. This level of authorization would result in completion of the interstate substitute highway program by fiscal year 1992.

Congress has repeatedly emphasized its commitment to completion of this Interstate System by 1990. However, the authorization levels for interstate substitute highway projects contained in the bill are insufficient to achieve this goal with respect to interstate substitute projects. The current bill would continue funding at the current level, which would delay completion of this area of interstate subsidy highway programs until fiscal year 1996.

The Conference of Mayors and the city of New York recommend that a committment should be made to provide all interstate transfer highway and transit funding for substitute projects by fiscal 1991, the expected interstate construction period. This would require an authorization level of $1.1 billion annually for fiscal year 1987 through fiscal year 1991. We urge the committee to provide such an authorization.

Turning to section 129, the provision that requires 85 percent of the transit money to be spent in the State in which it was raised, we respectfully suggest that this appropriately belongs in the committee that deals with the allocations of transit money, the Senate Banking Committee.

In addition, with respect to transit, and particularly, the situation in New York, New Jersey, and Connecticut, we currently have in excess of 6 million people a day on our transit systems, and we have an extremely congested highway and street system, particularly in Manhattan. There is nothing that could be done better for the highway user, both truck, commercial and commuter, than continuing to spend money on our transit and attracting people off of those highways and into the transit system.

The city of New York, the State of New York, and the Federal Government collectively are spending in excess of $1.5 billion a year to improve the transit system in our region. Most of this money is local money. We would like to see the Federal Government continue to be a partner in this, and we believe this provision is restrictive and undermines that partnership.

Senator SYMMS. Thank you very much for your statement.

Mr. Fogel, what you are saying, if I understand the general thrust of your statement, is if we block grant these funds and give them to the State, a lot of States then use the money for other choices rather than distributing it to the highway districts; is that it?

Mr. FOGEL. That is correct.

Senator SYMMS. I have heard a lot about that in Idaho, and it is rather troublesome to be confronted with that, because the concept of federalism and allowing the States to make a choice on one hand has a great deal of appeal, I think, to many people. How do we cope with that?

Mr. FOGEL. I think the first thing we need to find out is what kind of system the States currently have for distributing money. We know from what the percentages are in each State, but in my conversation with FHWA, they are not even sure how each State distributes its money. Each State may use whatever system it chooses.

I would recommend that either a pass-through be put into the legislation, which would set up a formula for each State distributing the money to local governments based on some percentage of responsibility of the secondary and urban road systems, or at a minimum, the Secretary certify that States have a fair and equitable system for distributing money to local governments.

In some cases, the States choose to keep a greater portion of the Federal money for themselves to spend on the sections of the Federal highway system that they have responsibility for.

Senator SYMMS. Thank you very much. I want to work with you on this to try to see if we can come to some kind of a solution, because my natural bias is in favor of the concept of federalism to allow the States to maximize decisionmaking, but I can see that it is a problem, and in my own State, there are many county roads now that once were paved but they have deteriorated to gravel because the county simply is short of funds through erosion of the tax base and the distressed economy, and so forth.

They need a bigger share, is what I am saying, from the States' apportionment. This is a real concern. I would like to see something done to continue to simplify and give more flexibility to the States, but not at the expense of any one particular section, whether it is urban or rural.

Mr. FOGEL. I am concerned under the block grant proposal that local governments will receive less rather than more Federal funds.

Senator SYMMS. Thank you both very much. We will look forward to working with you as we formulate this. Thank you.

Mr. SANDLER. Thank you very much.

Senator SYMMS. Our next witness, Joann Payne, consultant, Association of Business and Professional Women in Construction, Pennsylvania Chapter, is here from Little Rock, AR.

Joann, welcome to the committee.

STATEMENT OF JOANN PAYNE, CONSULTANT, ASSOCIATION OF BUSINESS AND PROFESSIONAL WOMEN IN CONSTRUCTION

Ms. PAYNE. Thank you. I am Joann Payne of PSM Consultants, and I represent the Association of Business and Professional Women in Construction and several other women-owned companies throughout the United States, a lot of women who would like to thank the members of the Transportation Subcommittee and the staff for the political courage to include women as disadvantaged for the purpose of section 130 of the Federal-Aid Highway Act of 1986.

Section 135(f) of the Surface Transportation Assistance Act of 1982 excluded women-owned businesses from participating in the DBE program because the Small Business Act does not presume women to be disadvantaged. However, in the construction industry and according to the Department of Commerce statistics on women, nothing is further from the truth.

I will not testify as to the pros or cons of the DBE program, but merely to suggest that what is good for the goose is good for the gander. My women ask no more or less from Congress.

There is no doubt that Congress' 10 percent goal for DBE companies has enhanced the growth and development of the program. It is equally true that section 105(f) has prohibited the growth and development of the WBE program.

Let us look at the facts. In 1982, before the enactment of section 105(f), WBE contracts totaled $237.6 million with a national average of 2.5 percent.

Approximately 2,000 women-owned businesses participated.

Before the enactment of section 105(f), the total contracts for MBE's were $415 million with a national average of 5 percent.

In 1985, 3 years after the enactment of the DBE program, the WBE total contracts were $296 million, with a national average of 2.5 percent, with approximately 2,000 women-owned companies participating.

In 1985, the DBE program had a total of $1.5 billion and a national average of 13 percent. In 1985-86, there were approximately 20,000 DBE firms that are certified. In 1982, there were less than 7,000 MBE companies.

In 1985, the difference in the programs was 10.5 percent and $1.2 billion. Why? Because the DBE program is mandated by Congress at a 10-percent goal, and the WBE program is a good-faith effort by the States, yet they were created at the same time and for the same reasons.

If Congress believes in the philosophy of the DBE program and reauthorizes its existence, then women should be included within the present 10-percent goal. Congress should not help one segment of the disadvantaged and not the other.

Senator Symms, 2 years ago, at a similar hearing, you questioned a woman who was President of a WBE company from New York. You asked her several questions, and she responded to them. Then you asked her this last question. "How can it be that women are in the majority population in this country yet there are special Federal set-aside programs for women?"

The lady did not respond to your question. I would like to do so today, because I believe it is a good question, one that deserves an answer. How is it that women are in the majority population in this country but have only achieved minority status in the social, economic and political areas? Why do women earn 40 percent less than men? Why in the business world is the management ratio 89 to 1 against women, even though there are as many women as men in the work force? Why are professions that are dominated by women the lower paying jobs? Why do women who head single-family households account for the largest percentage of lower income families? Why do women account for the largest groups in the lower income bracket? Why is it more difficult for a woman to receive a bank loan or credit? In the political arena, why are there only two U.S. Senators who are women? In the United States House of Representatives, why are there only 24 out of 438?

The answer to your question, Senator, I believe, centers on discrimination and suppression by both male and female. In summary, the issue before Congress is that of discrimination against women. If Congress chooses to ignore the facts of discrimination and in the fall a bill is signed by the President with a DBE program intact but without the inclusion of women, Congress will have dealt the women in this country a great blow of injustice and discrimination.

Women deserve better than that. Women are willing to contribute equally to the growth and development of our great Nation.

Thank you, Senator, and staff, for answering Senator Symms' question within yourself and verbally expressing your answer by adding women to the Disadvantaged Business Enterprise Program in section 130 of the Federal-Aid Highway Act of 1986.

Thank you.

Senator SYMMS. Thank you very much for an excellent statement. I appreciate your testimony here before this committee.

Our next witness is Mr. Tom Callaghan, executive director for the Alliance for Simple, Equitable, and Rational Truck Taxation.

Tom, welcome to the committee. I look forward to hearing from you.

STATEMENT OF THOMAS A. CALLAGHAN, JR., EXECUTIVE DIRECTOR, ALLIANCE FOR SIMPLE, EQUITABLE, AND RATIONAL TRUCK TAXATION

Mr. CALLAGHAN. The alliance is an organization of truck companies, truck leasing companies, independent truckers and suppliers to the the trucking industry who have joined together to work for a more sensible system of truck taxation and financing.

We testified before your hearings last summer here in Washington and in Coeur d'Alene in September. Basically, our message was that our system of highway finance and truck taxation has lost rationality and integrity. The system, often referred to as a user pay system, has become a user plus system. It is user plus, in that full paying highway users like commercial motor vehicle operators, pay for their own share of highway use, plus the share of those who have been exempted from some or all highway taxes.

They pay for their own share of highway use, plus enough to be diverted to mass transit. They pay for their own share of highway use, plus enough to be the financial underwriters of cost-expanding social policies like the Disadvantaged Business Enterprise Program, the Davis-Bacon Act and the Buy America Program.

We asked at those hearings that the committee consider the effect a continuation of these policies would have on competition between trucking companies and railroad companies, some of which have been the recipients of direct general revenue subsidies and one of which, Conrail, is presently exempt from all State taxation.

We would like to take this opportunity to offer our comments now on the bill before the committee and particularly, Mr. Chairman, your comments accompanying its introduction.

We support a spending down of the balance in the highway trust fund. Money has been paid into the highway trust fund for the purpose of highway maintenance and repair. We think it is an exercise in duplicitous accounting to allow that balance to accumulate for the purpose of offsetting the deficit.

We support the elimination of the Disadvantaged Business Enterprise Program. We fully recognize that there are governmental responsibilities to ensure that economic opportunities are available to all. We don't feel that that responsibility should be laid off on highway users. It is everybody's responsibility. If we are going to finance programs in that area, there should be general revenue financing.

We support your proposal to raise the threshold on the Davis-Bacon Act. The Federal Highway Administration has indicated that the Davis-Bacon Act expands the cost of the highway program by as much as $568 million per year. Commercial highway users, trucking companies, simply cannot afford to pay taxes driven by inflated wage rates.

We would support repeal of the Buy America Act. We think it makes sense for people who build highways to buy their materials from the source that makes the most business sense.

Regarding the Strategic Highway Research Program, which you heard something about from AASHTO and from others, what we are talking about is the expenditure of $150 million over 5 years. It

Mr. Callaghan. It is not use-related. If you buy a truck and run it 100 miles a month, you pay it. If you buy a truck and run it 10,000 a month, you pay it. It is totally unrelated to use, an irrational tax. There used to be an excise tax on automobiles. It was repealed in 1971 when car sales were soft. The big auto people went to the White House and said, "We have got to get rid of that tax so we can sell some cars."

Right now, the class 8 truck market is very soft. We are not selling the numbers of trucks we were selling in 1979.

Senator Symms. You made a comparison between Texas at 10.5 cents and Arizona at 71 cents.

Mr. Callaghan. That 71 needs a little explanation. They have a ton-mile tax there of 8 cents per mile. If you assume you are operating an 80,000 pound vehicle, that gets 5 miles per gallon, that is a 40-cent equivalent gas tax. You add on their 16-cent regular fuel tax, you are now at 56 cents. You add on the 15-cent Federal fuel tax, you are now at 71. That is how you reach that 71-cent figure.

Senator Symms. What would it be in Texas today, so we could compare it?

Mr. Callaghan. Texas, the fuel tax now, I believe, is 10.5. So you can get 10.5 plus 15.

Senator Symms. So it is 25 cents now?

Mr. Callaghan. That is correct. I believe that. That is just a guesstimate, really.

Senator Symms. So in other words, Texas has raised their State tax.

Mr. Callaghan. They have.

Senator Symms. Since the 1982 act was passed?

Mr. Callaghan. That is correct.

Senator Symms. So they have gone up, and of course, we added an additional 9 cents on the trucks.

Mr. Callaghan. Well, we went from 4 to 9 and from 9 to to 15.

Senator Symms. Correct. I guess we were lucky that the price of fuel went down during this same time period.

Mr. Callaghan. It appears to be turning around now. One other matter that is of major concern, and with your service on the Finance Committee, you would be very much aware of it, we keep hearing talk about the need to pick up about $10.7 billion in new revenue for the fiscal year 1987 budget. Everybody keeps saying, "Let's look at fuel." All the proposals that seem to be on the table tax only the fuel of highway users. They do not tax the fuel of the railroads, the barge lines, the airplanes, and others.

Senator Symms. I would say that this Senator would certainly oppose taking what would ordinarily be funds that should go to the trust fund for highways and using them for any other purpose. But I do think that those people in the highway community and the transportation community should be very vigilent on what is going to happen, because it is very obvious to me that the intention is to raise excise taxes in some areas to bring down the deficit on Gramm-Rudman.

I think this year, the way the Finance Committee's tax bill is written, there is going to be enough money in there to make up the difference, because people will lose their deductions on January 1 and won't get the tax breaks until July 1. That is a windfall to the is a significant amount of money. We would suggest to the committee that the research undertaken with these funds be more specifically directed. For instance, we might want to undertake research on the findings of the Federal highway cost allocation study and the trucking industry's concerns with those findings.

Second, you might want to perform research on the value of our highway system to the Nation as a whole and to our national defense.

Finally, Mr. Chairman, I would like to bring to your attention the fact that 4 years ago, a motor carrier could operate a truck in this country and pay a total fuel tax to State and Federal governments of 10.5 cents. In Texas and Oklahoma, he paid 4 cents to the Federal Government and 6.5 cents to the State for a total of 10.5 cents.

Now, that motor carrier operating in the State of Arizona will pay a total fuel tax equivalent to 71 cents per gallon. In the face of that kind of geometric increase in our highway user taxes, we simply have to cut the fat and the excess costs out of the program so that highway users get $1 in highway for $1 in tax. Thank you very much.

Senator SYMMS. Thank you for a very direct and excellent statement, Tom. I had the opportunity Saturday, in Boise, to talk to a couple of people in the trucking business, and they entertained a thought to me that we should change the excise tax on trucks to the manufacturers. What is your viewpoint on that? Now it is on the dealers, and they maintain a lot of those excise taxes are not being paid.

Mr. CALLAGHAN. Our feeling on the excise tax would go beyond that. We would favor repeal for the following reason: The excise tax is totally unrelated to highway use. It is 12 percent of the retail price. A $60,000 truck carries a $7,200 excise tax. That is a big ticket item.

The tax is totally unrelated to use, and the whole philosophy of highway user taxes is to tie taxes to use. It is interesting that the amount of money we divert to mass transit is $1.2 billion per year. The excise tax-on the purchase price of a truck produces $1.2 billion per year. It is an exact match.

We heard, just awhile ago, an attempted, justification for the diversion to mass transit—it gets people off the highways and into mass transit vehicles reducing urban congestion. Using similar reasoning, we could use highway trust fund revenue to buy everybody a TV set. Where they are home watching TV, they are not on the highways causing urban congestion.

Senator SYMMS. That is a good point. We might take this tack: If we are not successful in the $14 to $15 billion range to spend the trucks closer to zero, then we should start looking at some of those extra taxes on tires and trucks and so forth and repeal them to reduce the dollars. That would not go down well with most of us; it wouldn't be something I would want to see happen in terms of getting reduced dollars in the trust fund when we know we have the need. But I think in terms of equity, it would be something I would support if we can't spend this money that is in the trust fund.

In other words, you are saying the excise tax, in your view, is unfair.

Government. So that would make up some revenue on the first year. But the next year, we will be faced with the same thing, and excise taxes all of a sudden have been dropped from the conversation in the Finance Committee.

So I would think that that is where the plan is pointing toward. It wouldn't necessarily all be on fuel for trucks or automobiles, but there are other excise taxes that would be part of that, too.

I thank you very much for an excellent statement.

Mr. CALLAGHAN. Thank you, sir.

Senator SYMMS. Jeff Roehm, president of the American Traffic Safety Services Association and president of Enterprise Flasher Co., Wilmington, DE.

Welcome to the committee, Jeff.

STATEMENT OF JEFF ROEHM, PRESIDENT, AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION, ACCOMPANIED BY CAROLINE MINTER, LEGISLATIVE AFFAIRS DIRECTOR

Mr. ROEHM. Thank you, Mr. Chairman.

Thank you very much. As you stated, my name is Jeff Roehm, a small business owner in Wilmington, DE, and I am testifying this morning as national president of American Traffic Safety Services Association. Seated to my left is Ms. Caroline Minter, legislative affairs director for our association.

I want to thank you for inviting me to appear before you this morning to present testimony on section 130 of the proposed Federal-Aid Highway Act of 1986. We have responded directly to all of the provisions of section 130 in our written testimony. This morning, I will focus on subsection (f) of section 130, prime contracts for DBE's and the impact on specialty subcontractors, and also comment briefly on the critical problem that prison industries present to our industry.

In November 1985, I had the opportunity to testify before this subcommittee regarding section 105(f) of the Surface Transportation Assistance Act. Subsequent to that testimony, I received a communication from you, Mr. Chairman, commending ATSSA on the good, middle ground solutions proposed by our association.

Specifically mentioned were: Certification requirements; modification of eligibility standards for small businesses and economically disadvantaged businesses; and last, proposals to limit the amount of work in each specialty subcontracting area which would count toward the 10-percent goal.

Therefore, it is with great regret and no small amount of surprise that, with the exception of certification, we see that the Senate bill contains none of our recommendations.

In reaction to this committee's draft, I would like to address what we feel is the single most important item not covered in section 130: The impact on specialty subcontractors. In previous testimony, we suggested that specific limits be placed at each specialty subcontract area which would count toward the 10-percent goal. The apparent intent of subsection (f) is to create a set-aside program which would require that DBE firms act as prime contractors by contracting directly with the State.

It should be noted that because the percentages are so small, the burden and the reverse discrimination experienced over the past 4 years by specialty subcontractors will continue. This provision, while a praiseworthy goal, does nothing to reduce the impacts on specialty areas like traffic control, guardrail erection, pavement marking, hauling, or landscaping.

We, again, recommend that a limitation be placed on subcontracting work. This is critical to specialty subcontractors who have been unfairly and adversely affected by this program. In order to lessen the impact on the DBE's and simplify the reporting procedures, we suggest a proposal similar to the one that is currently being reviewed in Utah that will limit the work which would count toward the goal in seven subcontracting areas. An implementation plan for this proposal is outlined in our written testimony.

We have testified before on the problems encountered by our members with the program as it is now being administered. The Senate bill addressed the problem of certification, and we commend the committee and the staff for this. However, the impact of section 105(f) on specialty subcontractors remains a major source of concern, not only to the members of the traffic control industry, but to other specialty contract industries, as well.

Unless limits can be put on the amount of work in each subcontracting area as we recommend, then specialty items will continue to be used to fill the 10 percent goal and small industries will continue to fill 100 percent of the requirements.

These small specialty businesses are comprised of taxpaying citizens in your State, and their livelihood is being threatened. They have made significant investments in equipment and training to fill a recognized public need, and to disregard these constituents and allow one segment of the highway industry to be unduly impacted is grossly unfair.

If changes in the program placing specific limits on specialty subcontracting cannot be implemented, then we join with others this morning in recommending that the program be abolished by gradually reducing the goal over 4 years to 8 percent the first year, 6 percent the second, 4 percent the third and 2 percent the fourth.

In reference to prison industries, we have testified in the past on the effect that prison industries have had on our industry. There is a provision in House bill 3129 which limits the use of convict-produced material on Federal-aid highway projects to their already expanded July 1985 levels.

We would ask this subcommittee to provide a similar provision in their transportation bill. Without this provision, the unrestrained expansion of the prison industry into the Federal-aid market unfairly threatens an entire segment of the private sector. A little-noticed, nondebated insertion into the 1984 Appropriations Act has produced a radical reordering of Federal-aid rules and threatens an entire industry. An example of what is happening in various States is outlined in our written testimony.

Expansion of prison industries on Federal-aid jobs is occurring at ever-increasing rates. The adoption of this compromise amendment, which the prison industry directors admit will not affect the present programs, will resolve once and for all the long, unnecessary dispute involving the private side industry.

We ask that you include this provision in the Senate bill to remove this Government created monopoly and put taxpaying citizens back to work before another small business sector of the free market economy is destroyed.

We appreciate the opportunity to present our views, and we urge this committee and staff to exercise their political and moral responsibilities by instituting legislation that will bring an end to the inequities now existing in the areas we have outlined.

Thank you.

Senator **Symms**. Thank you very much for a very excellent statement. That is a very detailed critique of part of this bill, and I will carefully take it into consideration and study it. Thank you very much.

Mr. **Roehm**. Thank you, Mr. Chairman.

Senator **Symms**. Our last but certainly not least witness this morning is Mr. James A. Wilkins, vice president, public and government affairs, Marathon Oil Co. from Findlay, OH.

Mr. Wilkins.

STATEMENT OF JAMES A. WILKINS, VICE PRESIDENT, PUBLIC AND GOVERNMENT AFFAIRS, MARATHON OIL CO.

Mr. **Wilkins**. Thank you, Senator.

Since I am last, I will be doubly attentive to being short. There is one part of the highway funding and highway program that we feel compelled to speak on, and basically, that is the subsidy that is granted out of the highway funds for ethanol or gasohol, if you will.

Since its conception in 1979, the highway trust fund has yielded $1 billion on this program, and it currently is anticipated that it will go above $500 to $600 million additionally per year.

This subsidy for a highway user works like this: Assume two cars; each drive 15,000 miles a year and each use 750 gallons of gasoline. Both drivers would pay $67.50 in Federal highway tax, but $45 dollars of the one using gasohol would be kept by the seller of the product. In other words, the taxpayer pays the Federal highway tax, and the seller or the service station operator, often an oil company, keeps the money. It never even gets to the highway fund.

Since gasohol is 10-percent ethanol and 90-percent gasoline, it means that the Federal Government is paying 60 cents per gallon of ethanol out of the Federal highway fund. It is getting extremely expensive.

Now, something happened May 2 that I think is worthy of mentioning. The Department of Agriculture granted that for every 2.5 bushels of corn that an ethanol producer buys, the Government gives them an additional bushel free. The impact of that is 3.8 cents additional subsidy on gasohol. The implication or the highway fund is that now, an incredible, 98-cent subsidy per gallon of ethanol is paid for by the Federal Government on a product that costs about $1.15 to a $1.40 to produce.

When you subsidize between the Agriculture Department and the highway fund that much, the demand for ethanol has got to go up, and that is going to further drain the highway fund. It would make sense, perhaps, that agriculture, if this is a farm program, should fund the ethanol program. Maybe they have stumbled on the right way to go, and maybe it would be wise in the highway program to return $500 or $600 million a year to the highway fund by shifting the ethanol subsidy to Agriculture.

We bring that up as food for thought. We have nothing against ethanol ourselves. It does distort the gasoline market, and it hurts the highway fund.

Senator SYMMS. Thank you very much. Being in the oil business, with the EPA ruling to take lead out of gasoline, do you predict that there will be a bigger increase in the use of ethanol to kick these octanes up a little bit?

Mr. WILKINS. I personally don't, sir, no, sir. There are five ways to get the octanes, and ethanol is one of them; methanol is another; there is an MTBE ethanol that you can use; you can rerefine, that will do it, or you can add tertiary butyl alcohol. That would do it.

Senator SYMMS. There is some research going on in ethanol in my State. They are finding when they make the alcohol out of axseed that the byproducts from the axseed barley are more valuable than the alcohol it produces. There might be some way that it could be used there. It wouldn't require a subsidy then.

Mr. WILKINS. That is correct. I think there are all kinds of alternative uses along that line.

Senator SYMMS. We thank you very much. I thank you for your testimony. It will be valuable to the committee.

Mr. WILKINS. I do have a written version here.

Senator SYMMS. Your entire written statement will be made part of the record.

Mr. WILKINS. Thank you.

Senator SYMMS. The committee counsel just notified me that Gard Kealoha has arrived. Is Mr. Kealoha here? If he is here, we will welcome him now to the committee to make a statement.

Do you have a prepared statement, Mr. Kealoha?

STATEMENT OF GARD KEALOHA, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS, STATE OF HAWAII

Mr. KEALOHA. I will explain.

Aloha, Senator Symms, and your committee. I have just gotten off the plane which was delayed two times, 2 hours, with all of my testimony in a box that will be delivered to you. It will be delivered to your offices. I am sorry.

Senator SYMMS. We will insert your entire statement in the record. Would you please summarize it? We hope that you haven't had too difficult of a flight.

Mr. KEALOHA. It was a long flight. I have just gotten off. I wanted to thank you for including the Office of Hawaiian Affairs this morning. I am Gard Kealoha, the trustee and chair of the Culture Education Committee of the Office of Hawaiian Affairs, a constitutionally created entity that advocates for the economic and social self-sufficiency of native Hawaiians in the State of Hawaii.

We are extremely concerned about the possible destruction of an impressive archaeological district on the Island of Oahu that lies directly in the path of the proposed H-3 Freeway.

Unfortunately, the State department of transportation, the department of lands and natural resources, and the historic preservation office have never consulted us on this Luluku matter, save for one meeting with the department of transportation director and another meeting between our culture/education committee and the transportation department at the urging of Senator Matsunaga.

The Department of Transportation Bishop Museum survey recommendations on the Luluku district nominates 17 sites separately. It disturbs the office of highway affairs, as naming them separately disturbs the native Hawaiian, who looks at land divisions in a very different way from western societies. The DOT report stops glaringly short of native Hawaiian cultural values, implications, practices, and significances.

The DOT report was compiled by two archaeologists who hold only bachelor degrees. We are prepared to present you testimonies compiled by archaeologists with doctoral degrees, who are thoroughly familiar with the Hawaiian cultural landscape and whose assessments are at complete variance with the recommendations of the DOT report. The trustee of the Office of Hawaiian Affairs also unanimously voted to undertake a lawsuit on this matter. It is our opinion that waiving 4(f) protections set a dangerous precedent, threatening native American constituencies with similar problems in our other 49 States.

A recent foreign film from Argentina called "The Official Story," which was judged the best foreign film for the Academy Awards this year, portrays a very simple and profound message that I think all of us can understand. The assertion that history is a memory of its people provokes OHA to do everything it can to protect its cultural sites.

We urge you, Senator Symms and ask your committee to not allow your committee to erase our native Hawaiian memory, our legacy of a people who maintained a superb culture for over 1,500 years. That is my simple summary.

I would like to say that I have testimony from University of Hawaii anthropology professor, Dr. Bion Griffin, Dr. Allen Haun, Dr. Paul Rosenthal, and Dr. Patrick Kirch. Dr. Pauline King, a native Hawaiian scholar at the University of Hawaii also comments on the waiver. I appreciate your hearing us.

Senator SYMMS. Thank you very much. We welcome your testimony. I also have testimony from Marilyn Bornhorst and from Richard Ziegler. We ask unanimous consent that they enter the record.

Mr. KEALOHA. I would like to emphasize we had not originally taken a stand on the freeway. The fact that it threatens the archaeological treasure forced us to take a stand.

Senator SYMMS. Thank you very much. That concludes the formal part of our hearing this morning. The record will be kept open until June 3. For anyone who wishes to submit further statements, please contact the committee.

The committee stands adjourned.

[Whereupon, at 12:05 p.m. the subcommittee was recessed, subject to the call of the Chair.]

[Statements submitted for the record and the bill, S. 2405 follow:]

TESTIMONY BY SENATOR FRANK R. LAUTENBERG
S. 2405, the Federal-Aid Highway Act of 1986
Subcommittee on Transportation
Senate Environment and Public Works Committee
May 20, 1986

Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee on Transportation to testify on S. 2405, legislation that will have a major impact on national transportation policy well into the next decade.

On May 6, along with Senators Stafford, Bentsen, Abdnor and Burdick, you introduced S. 2405 to reauthorize the federal-aid highway program. A reauthorization bill for the highway program must be enacted by October 1, when the authority granted in the Surface Transportation Assistance Act of 1982 expires. I support reauthorization of the highway program and commend your early attention to this legislation.

Although I no longer serve on this Subcommittee, as a member of the Environment and Public Works I will have the opportunity to work with you on this legislation. I chose to testify before the Subcommittee today to make two things clear:

* I strongly support the federal highway program and some of the improvements to it contained in this bill.

* I strongly oppose the provisions in this bill which would strike at the heart of federally assisted mass transit programs.

My message to the Subcommittee is straightforward: we should not saddle the highway bill with the controversy that will inevitably accompany attempts to gut federal funding for mass transit. If there is a problem that must be addressed in the highway program, let's address it. But, do not do so at the expense of our mass transit program.

Mr. Chairman, I have strongly supported the federal-aid highway program while serving on this Committee. In fact, during consideration of budget reconciliation legislation, I opposed artificially low expenditure caps on obligations from the Highway Trust Fund. The Trust Fund is financed by user fees, or taxes if you like. These revenues are dedicated to transportation improvements and cannot be used for any other purpose. Taxes paid into the Highway Trust Fund should be used for the purposes Congress intended and not to provide paper budget savings to free up money for the Pentagon, or other federal agencies.

I have also supported administrative approval of the Interstate Cost Estimate, which is included in S. 2405. This is necessary to avoid the intolerable disruptions in state highway programs occasioned in the past by congressional inability to approve the ICE in a timely fashion.

But today, Mr. Chairman, I am here to state my strong opposition to section 129 of S. 2405, a section which must be removed. This provision destroys any semblance of a balanced, national transportation policy. It is a slap at mass transit initiatives approved by the Congress in 1982. It is an unwarranted, wrong-headed arrow aimed at the heart of mass transit systems across this nation. It does not belong in this bill, and could cripple it.

Mr. Chairman, in 1982, the Congress rid mass transit of its designation as the step child of national transportation policy. The Surface Transportation Assistance Act set aside one penny of the five cent increase in the federal gasoline tax for mass transit. It created a program at the Urban Mass Transit Administration, funded by the penny dedicated for mass transit, to meet the extraordinary capital needs of transit-dependent states and cities.

Section 129 of S. 2405 turns the clock back on national transportation policy. It would grant each state, regardless of its transit need, 85% of what it pays into the Mass Transit Account of the Highway Trust Fund. States securing these funds would not have to spend them for transit services. They could use them to supplement highway programs.

If the goal of this proposal is to secure equity in the distribution of mass transit funds, there are alternative and better means to secure that end. If the goal of this proposal is to get more highway funds to highway dependent states, we should address that need. But, if the goal is to destroy the "penny for transit", this is an objective that I must oppose with every resource available to me.

Mr. Chairman, I openly acknowledge that I have a strong state interest in this matter. New Jersey is a densely populated state. It is a state that is very dependent on mass transit. But, I recognize that it is important to have a national transportation policy. It is important to use federal transportation dollars to build and maintain an infrastructure that supports economic activity all over this country. And, that meets the transportation needs of citizens all over this country.

Some of our states rely almost exclusively on highways for moving goods and people. I support adequate highway funding for those states. Some states need air links to thrive, even if they are not viable on a stand alone basis. The federal government helps out in those cases. Densely populated states and large urban regions depend on mass transit to function. The Congress recognized that in 1982 and has rejected Administration attempts to end federal operating assistance to mass transit since the first Reagan budget was submitted to the Congress. We should not play off these different modes of transportation against one another, and turn national transportation policy into a war between the states and regions of our country.

Mr. Chairman, even when mass transit assistance is counted, New Jersey is a donor state. In 1984, New Jersey paid $39 million into the mass transit account of the Highway Trust Fund, and received $54 million in return. That's a bonus of $15 million. But, in the same year, New Jersey paid $329 million into the Highway account of the Trust Fund, and received only $287 million in return. That's a debit of $42 million. So, my state is a net loser. We contributed $27 million in transportation monies to the rest of the states last year, at a time when our own highway and mass transit needs are not being met, and we are floating bonds and raising fares to cover our needs.

Mr. Chairman, this is not a one time contribution. Historically, New Jersey has been a net loser under the Highway Trust Fund. Over the life of the Fund, New Jersey has paid in one dollar and gotten back 86 cents in return. New Jersey has gotten no benefits from the 85% minimum allocation under the highway program. We've been too rich to be poor, as it were, and too poor to be rich. Adoption of an 85% minimum for the mass transit program will make New Jersey a two time loser.

The Governor of New Jersey is supportive of efforts at the National Governor's Association to end the federal gasoline tax, and leave these matters to the states. That is the kind of reaction you are going to see if highway legislation this year further aggravates the situation for donor states. Some states will just say, "Let's end the Highway Trust Fund. We'll take care of ourselves."

Mr. Chairman, proponents of eroding the penny dedicated to mass transit try to argue that their proposals mirror the highway program. They say section 129 is designed only to insure that each state gets at least 85 cents back on each dollar it pays into the mass transit account of the Highway Trust Fund, similar to the 85% minimum allocation guaranteed by the highway program.

I want to strongly contest that argument here today. That argument is a red herring. The proposal to siphon off money from the penny of the gas tax dedicated to mass transit cannot be fairly compared to the 85% minimum in the highway program for two reasons.

First, the 85% minimum in the highway program does not redistribute funds from one state to another. Under the highway program, funds are allocated to states by formula for each type of federally assisted highway project. Once funds are allocated, if a state does not receive a return of 85 cents on the dollar, it is allotted additional funds to meet this threshold. Funds are not taken from one state and given to another. All states get funds by formula. Then, some states get even more, to bring them a minimum of 85% on the dollar.

This 85% minimum requirement in the highway program bears no resemblance to the proposed change in S. 2405 affecting mass transit funds. The change in mass transit allocations proposed in this bill does rob Peter to pay Paul. It does redistribute funds between states. It would take mass transit money from states with heavy transit dependence --New Jersey, New York, Oregon, Georgia, and others -- and redirect it to other states, regardless of their transit needs. And, regardless of how favorable their draw on the Highway Trust Fund already.

Mr. Chairman, there is another stark contrast between the 85% minimum for highways and the one proposed for mass transit. The proposed change in the allocation of mass transit funds would not only redistribute funds among states, it would divert funds now dedicated to mass transit to the highway program. The extra funds allocated to some states under the 85% minimum highway program must be spent on highways. The proposal in S. 2405 takes dedicated mass transit funds and siphons them out of the mass transit account, to increase the size of the highway program.

Quite simply, this provision is a raid on the Mass Transit Account. It is a raid on federal transportation assistance for mass transit dependent states. It is a raid on the pocketbooks of commuters and industry in those states. And, it would act like a major tax increase on the economies of those states affected.

Mr. Chairman, if the issue at stake here is equitable distribution of mass transit funding to small communities, which feel they have not participated fully in the Section 3 UMTA program, this is the issue that should be addressed. And, there are alternative proposals on the table.

Last year, I introduced legislation to fund Section 18 of the UMTA program, to provide mass transit assistance for communities of less than 50,000 residents, out of the gas tax. My colleague from New York, Senator D'Amato, has introduced a bill which establishes a special $200 million fund to cover the transit needs of small communities. There are other proposals for dealing with this issue. But, one thing is clear: we don't have to destroy this program in order to save it.

So, Mr. Chairman, I urge in the strongest possible terms that the Congress look for an alternative if there is support for allocating more mass transit funding to small communities. Or if there is a need to get more highway funds to certain states. To persist with a raid on the Mass Transit Account would create needless controversy and delay in consideration of the highway bill. It is in everyone's interest that this be avoided.

Thank you, Mr. Chairman.

TESTIMONY OF SENATOR SLADE GORTON

On S. 2405, the Surface Transportation Reauthorization Act

Submitted to the Environment and Public Works Committee
May 20, 1986

HIGHWAY BEAUTIFICATION

I have been involved in billboard reform since 1961, when I was in the State Legislature and helped to write the law restricting the construction of billboards in Washington. Last July I introduced S. 1494, the Highway Beautification Act Amendments of 1985.

The purpose of this bill is straightforward -- to restore the original commitment of Congress to beautify our nation's highways by effectively controlling the burgeoning numbers of billboards that spoil the varied and splendid landscapes which we, as a nation, are privileged to view through the access provided by our vast system of federal highways.

Twenty-one years after the enactment of the Act, we are unable to celebrate its success. Instead, the Act has accomplished exactly the opposite of Congress' original intent. Rather than slowing or reversing the numbers of billboards being built along the highways, loopholes in the Act have resulted in increasing numbers of billboards that assault our senses and mar this country's extraordinary natural beauty.

Investigations by the General Accounting Office (GAO) reveal that far more signs are going up under the Act than are coming down. We now have 14 billboards for every 10 miles of federal highway. Of those, over 150,000 are illegal or non-conforming. Surely, this is not the legacy we wish to pass on to future Americans.A chart is attached that illustrates the results of the GAO investigation, which demonstrates the growth in the numbers of billboards along the highways.

Additionally, we have tied the hands of state and local governments that have tried to enforce their own standards of scenic beauty. States such as Vermont and Maine were financially penalized under the 1965 Act when they chose to eliminate billboards from their highways. Other local governments have not been able to enact stricter billboard regulations because of the costs they would incur under the federal law. The federal law should aid rather than hinder local governments for trying to enact billboard reform.

Members of the billboard industry, as polluters of the nation's highways, have enjoyed the unusual position of being paid not to pollute. A 1978 amendment supported by the billboard industry requires billboard owners to be compensated in cash for the removal of billboards that are nonconforming because of the Act. The GAO found that often billboard owners do not actually remove the billboards for which compensation has been paid. Additionally; the billboards proposed for compensation are ones that have ceased to be valuable to the billboard owner because of changes in the highway system, and likely would have been abandoned anyway.

Perhaps the most pernicious aspect of the present federal law is this subsidy the American taxpayer is required to pay to the billboard industry. We have spent $200 million thus far for billboard control. The General Accounting Office estimates that the potential liability for the removal of all nonconforming billboards totals nearly $1 billion. This subsidy of the billboard industry is particularly egregious in these times of severe budgetary constraints. A second chart is attached which illustrates the increasing cost to the American taxpayer because of the cash compensation requirement.

S. 1494 will change the present law in several ways. First, the bill would place a moratorium on the construction of new billboards in urban areas, similar to the present ban on constructing billboards in rural areas. The ban would not apply to the types of signs that are presently exempted in the Act, such as directional signs, or on-premise advertising. The bill would also eliminate an enormous loophole that permits billboards to be built in rural unzoned commercial or industrial areas, despite the clear intent of the Act to ban the construction of new billboards in rural areas.

S. 1494 will remove the requirement of cash compensation for the removal of nonconforming signs, and will authorize the use of amortization as a means of compensation. Removal of this requirement will return to state and local governments the ability to impose strict regulations on billboards. Although the industry claims that such a compensation scheme is unconstituional, that is simply not the case, as can be determined from a close review of the case law.

For the Committee's reference, a recent law review article which appeared in the Zoning and Planning Law Report is attached. This article addresses the constitutional arguments often made in regards to billboard reform and aptly demonstrates the constitutional validity of the reforms contained in S. 1494.

S. 1494 will also prohibit the presently widespread practice by billboard owners of cutting the vegetation along the state rights-of-way so that their signs may be better viewed by the travelling public. Additionally, the bill increases the present enforcement requirements.

The battle for billboard reform is being fought by an unusual and broad-based coalition that includes: the Reagan Administration, the Sierra Club, the National Wildlife Federation, the National Audubon Society, the American Institute of Architects, the National Taxpayers' Union, the National League of Cities, the American Society of Landscape Architects, the Environmental Defense Fund, the Environmental Policy Institute, the Garden Clubs of America, the Izaak Walton League, the National Parks and Conservation Association, the National Trust for Historic Preservation, the Natural Resources Defense Council, Preservation Action, and the Wilderness Society.

The many serious defects of the present law were aptly summarized by the Secretary of Transportation, Elizabeth Dole, who stated in a letter that is attached that she agreed "wholeheartedly that the current law is unworkable and in great need of change." I strongly urge the Committee to concur with Secretary Dole and include the provisions of S. 1494 in the highway legislation to finally make effective the original intent of Congress in passing the Highway Beautification Act.

Section 129

I am strongly opposed to Section 129 of this bill, which would ensure that every state would receive annual funding equal to at least 85% of that state's contributions of the penny-a-gallon fuel tax that Congress set aside for mass transit in 1982.

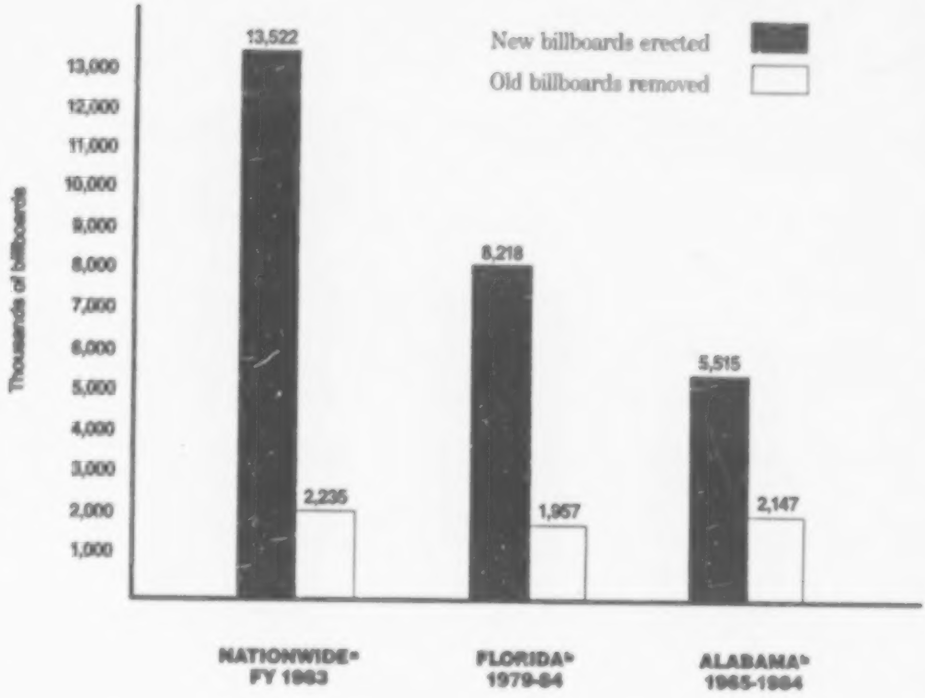
Enacting such a requirement would eliminate most of the discretion that Congress currently exercises over transit capital assistance. Instead, we would have a formula distribution which took no account whatsoever of a state's mass transit needs, or its ability to use those funds cost-effectively. Furthermore, by permitting states to use the funds for highway projects, it would undo a major part of the compromise that permitted the Surface Transportation Assistance Act of 1982 to be enacted in the first place.

I recognize that there is dissatisfaction on the part of some with the fact that a disproportionate share of transit assistance is received by a relatively few jurisdictions. This is an issue to which members of the Banking Committee are sensitive, and I would anticipate that that Committee would address this issue when it reauthorizes the federal mass transit assistance program this year. To attempt to address this question piecemeal, however, and apart from the rest of the mass transit program, will only lead to a fragmented and ineffective program of mass transit assistance. Further, I must object to the argument that states should somehow be entitled to receive federal spending under this, or any, federal program in strict proportion to their population or tax contributions. If this principle were to be broadly applied, there would be relatively little need for a federal government.

I urge the Committee to delete from S. 2405 any provisions affecting the distribution of mass transit assistance, and to allow these questions to be addressed in the context of the mass transit reauthorization bill.

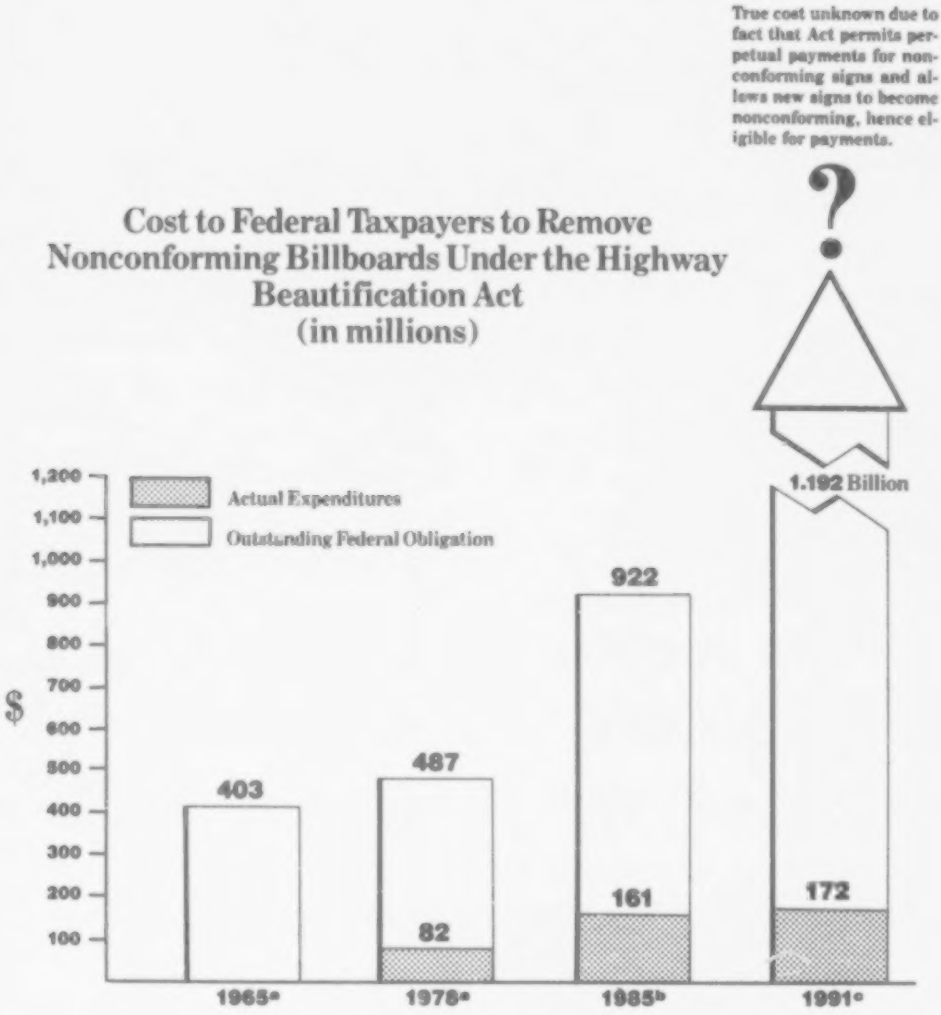
Growth of Billboard Pollution

(on Federal Interstate and Primary Highways)



[a] GAO Report CED-85-34, January 3, 1985, "The Outdoor Advertising Control Program Needs to be Reassessed." (Data from 45 states.)

[b] Inspector General, Department of Transportation, Report on Audit of Highway Beautification Program, FHWA Region 4, Report No. R4-FH-4-158.



Cost to Federal Taxpayers to Remove Nonconforming Billboards Under the Highway Beautification Act (in millions)

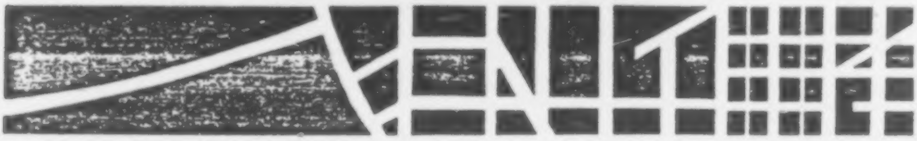
True cost unknown due to fact that Act permits perpetual payments for nonconforming signs and allows new signs to become nonconforming, hence eligible for payments.

[a] GAO Report CED-78-38, March 27, 1978, "Obstacles to Billboard Removal."

[b] GAO Report RCED-85-34, January 3, 1985, "The Outdoor Advertising Control Program Needs to be Reassessed."

[c] Assumes inflation rate of 5%, compounded annually, and expenditure of all federal appropriations through FY 1985. Also assumes no further federal appropriations are made to remove billboards.

ZONING AND PLANNING
LAW REPORT



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LOCAL CONTROL OF SIGNS AND BILLBOARDS: AN ANALYSIS OF RECENT REGULATORY EFFORTS

by Edward H. Ziegler, Jr.
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Since the U.S. Supreme Court's 1981 decision in Metromedia, Inc. v. City of San Diego, *which produced five separate views on the validity of sign and billboard controls, local regulations have been widely adopted or redrafted resulting in considerable litigation in both federal and state courts. The Court's decision last year in* Los Angeles City Council v. Taxpayers for Vincent *and other recent decisions now provide a framework for analyzing the constitutional balance between first amendment protection of commercial and ideological expression and the community's interest in aesthetics. The following article surveys these decisions and examines the current law of sign and billboard regulation.*

- **Regulation of Commercial and Noncommercial Signs**
- **Time, Place, and Manner Restrictions**
- **Fees, Removal, and Amortization**

Introduction

Since early in this century, signs and billboards have been regulated to promote the traditional public purposes of health and safety. *See Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526 (1917). Local controls over both commercial and noncommercial signs have more recently been widely adopted as a result of state court decisions recognizing aesthetic considerations as a legitimate public purpose for police power regulation. State courts were still in the process of resolving problems related to the role and scope of aesthetics as a legitimate basis for land use controls when the U.S. Supreme Court further complicated the issue with its decision in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), a case involving the first amendment protection accorded signs as commercial or political speech. Only a few clear principles emerged from the decision. *See* Crawford, "The Metromedia Opportunity," 4 ZONING & PLAN. L. REP. 145 (1981). The five separate opinions of the Court in *Metromedia* sent mixed signals to federal and state courts concerning the constitutional validity of sign and billboard controls.

Last year, the Supreme Court decided *Los Angeles*

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This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent person should be sought.—From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers.

City Council v. Taxpayers for Vincent, 104 S. Ct. 2118 (1984), which upheld a regulation prohibiting the posting of signs, including temporary political signs, on public property. Read together, *Metromedia* and *Taxpayers for Vincent*, along with an increasing number of state and federal court decisions, provide a somewhat more complete picture of the constitutional parameters of sign and billboard regulation and identify those regulatory issues still unresolved by the courts.

Aesthetics as a Basis for Regulation

The Supreme Court in both *Metromedia* and *Taxpayers for Vincent* upheld the aesthetic interest in community appearance as a legitimate basis for regulation of signs. These decisions reinforce the clear trend in the majority of recent state court decisions which have upheld land use regulation based on aesthetic considerations. Court decisions in the following states have held that the aesthetic interest in community appearance and the derivative human values related thereto may constitute the basis for land use regulation: Arkansas, California, Colorado, Florida, Georgia, Hawaii, Massachusetts, Montana, New Jersey, New Mexico, New York, North Carolina, Nevada, Ohio, Oklahoma, Tennessee, Oregon, Utah, and Wisconsin. Moreover, in virtually all other states, courts are likely to uphold regulation based on the aesthetic interest in community appearance when linked with such other non-aesthetic public purposes as traffic safety, protection of property values or tourism. As discussed below, an aesthetic interest in community appearance, either alone or linked with some non-aesthetic public purpose for regulation, will generally be held to constitute a sufficient governmental interest justifying reasonable controls on both commercial and political signs, despite the fact that both types of signs are forms of speech protected by the first amendment.

Deference to Legislative Judgment

An important issue in regulation is the extent to which courts will defer to the legislative judgment that restrictions imposed on signs further aesthetic or other public purposes for regulation. Where regulation significantly impacts speech protected by the first amendment, it will not be entitled to the usual presumption of validity. Judges generally exercise their own independent judgment on first amendment issues. *See, e.g.*, *Bose Corp. v. Consumer's Union of United States, Inc.*, 104 S. Ct. 1949 (1984). However, the Supreme Court in both *Metromedia* and *Taxpayers for Vincent* expressly ruled that in the area of sign controls, it would generally defer to a reasonably plausible legislative judgment that a particular restriction on signs is likely to further an aesthetic purpose in promoting visual beauty or other non-aesthetic public purposes such as traffic safety. Although some recent court decisions have invalidated sign controls with apparent reliance on Justice Brennan's concurring opinion in *Metromedia* calling for greater judicial scrutiny of sign restrictions, *see, e.g.*, *Southern New Jersey Newspapers v. State*, 542 F. Supp. 173 (D.N.J. 1982); the Supreme Court's decision in *Taxpayers for Vincent* reinforces the clear trend not to require communities to demonstrate by statistical or other concrete scientific evidence that aesthetics or other supporting public purposes are likely to be furthered by regulation. *See Dunagin v. City of Oxford*, 718 F.2d 738 (5th Cir. 1983); *City of Fayetteville v. Mallroy Bank & Trust Co.*, 278 Ark. 500, 647 S.W.2d 439 (1983); *Singer Super Markets, Inc. v. Hillsdale Bd. of Adjustment*, 183 N.J. Super. 285, 443 A.2d 1082 (1982).

A legislative record supporting regulation should be developed and the aesthetic or other purposes supporting regulation should be set out, since courts tend to be skeptical of what appear to be ad hoc post-enactment rationalizations for regulation. *See Dills v. City of Marietta*, 674 F.2d 1377 (11th Cir. 1982) (refusing to accept aesthetics as basis for sign controls since ordinance did not state or otherwise indicate that it was adopted for that reason).

Total Ban on Signs

While the Supreme Court has ruled that political or ideological expression, as so-called "pure speech," is entitled to a greater degree of protection than commercial speech, the difference in protection is still not entirely clear. In *Taxpayers for Vincent* the Court ruled that a sign restriction which is content neutral but which significantly impacts a form or method of political expression will be upheld only if: (1) it is within the constitutional power of government; (2) it furthers a substantial governmental interest that is unrelated to the suppression of free expression; and (3) any incidental restriction on freedom of expression is no greater than necessary to accomplish the governmental interest.

Applying this test, the *Taxpayers for Vincent* Court upheld as constitutional a total ban on the posting of signs, including temporary political signs, on public property within the city. The Court found the city's interests in aesthetics and traffic safety sufficiently substantial to justify the ban and pointed out that ample alternative channels of communication existed for political expression within the community.

Regulation that has the effect of banning political signs everywhere within a community or even within a residential area are likely to be held unconstitutional as unduly restrictive and as foreclosing adequate channels of communication for political speech. *See, e.g., Mathews v. Town of Needham*, 596 F. Supp. 932 (D. Mass. 1984); *Meros v. City of Euclid*, 594 F. Supp. 259 (N.D. Ohio 1984); *State v. Miller*, 83 N.J. 402, 416 A.2d 821 (1980).

The validity of a ban on free-standing political signs that are visible from a highway remains an unresolved issue. *Compare State v. Lotze*, 92 Wash. 2d 52, 593 P.2d 817 (1979) (traffic safety and aesthetics held to justify ban on highway billboards expressing political or ideological message) *with State ex rel. Dept. of Transp. v. Pile*, 603 P.2d 337 (Okla. 1979), (ban on highway billboards not applicable to political or ideological speech). However, it now seems clear that such a ban, or other forms of regulation, that grant more favorable treatment to commercial signs than political or ideological signs generally will be held unconstitutional. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981); *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1st Cir. 1980), aff'd, 453 U.S. 916 (1981); *Norton Outdoor Advertising, Inc. v. Village of Arlington Heights*, 69 Ohio St. 2d 539, 433 N.E.2d 198 (1982). It should be noted that in at least three states—Florida, Massachusetts and New York—courts have recently upheld virtual bans on all free-standing signs either in a particular area or within the entire community where the ban was not challenged by the owner of an existing billboard which displayed a political or ideological message. *City of Lake Wales v. Lamar Advertising Ass'n*, 414 So. 2d 1030 (Fla. 1982); *Maurice Callahan & Sons, Inc. v. Outdoor Advertising Bd.*, 12 Mass. App. 536, 427 N.E.2d 25 (1981); *Syracuse Savings Bank v. Town of DeWitt*, 56 N.Y.2d 671, 436 N.E.2d 1315, 451 N.Y.S.2d 713 (1982).

In *Metromedia*, the Supreme Court ruled that a content-neutral sign restriction which significantly impacts a form or method of expression of protected commercial speech will be upheld if the regulation: (1) seeks to implement a substantial governmental interest; (2) directly advances that interest; and (3) goes no further than necessary to accomplish that interest. Applying this test in *Metromedia*, the Court ruled that aesthetics and traffic safety were both sufficient governmental interests to justify a total ban on all off-site commercial signs but held the ordinance in question unconstitutional because it impermissibly favored commercial over political speech by allowing on-site commercial, but not on-site political, signs.

Under *Metromedia*, a total ban on all commercial signs within a community is likely to be held unconstitutional as unduly restrictive and as foreclosing adequate channels of communication for commercial expression, at least where a significant number of commercial uses already exist. *Cf. State v. Bloss*, 637 P.2d 1117 (Hawaii 1982) (holding unconstitutional an ordinance banning commercial speech at all times and in any manner on public property in Waikiki). Although the Supreme Court has required that "For Sale" signs be allowed in residential areas, see *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977), a ban on all other commercial signs in a residential area is likely to be upheld. *See, e.g., State v. J. & J. Printing*, 167 N.J. Super. 384, 400 A.2d 1204 (App. Div. 1979); *Wildman Arms, Inc. v. Zoning Hearing Bd.*, 15 Pa Commw. 569, 328 A.2d 528 (1974).

Similarly, the Supreme Court's ruling in *Metromedia* that off-site commercial signs may be banned has served as precedent for a number of state court decisions upholding bans on off-site commercial signs near highways, in business districts or within an entire community. *See Bloucher Outdoor Advertising Co. v. Minnesota Dept. of Transp.*, 347 N.W.2d 88 (Minn. App. 1984) (highway); *Charter Townships of Oshtemo v. Central Advertising Co.*, 125 Mich. App. 538, 336 N.W.2d 823 (1983) (business district); *Lamar-Orlando Outdoor Advertising v. City of Ormand Beach*, 415 So. 2d 1312 (Fla. App. 1982) (community).

Finally, the first amendment protection accorded commercial speech is unlikely to overcome a ban on commercial signs which overhang public areas, *see State v. Sangvinetti* 141 Vt. 349, 449 A.2d 922 (1982), or a ban on all free-standing commercial signs, *see Syracuse Savings Bank v. Town of DeWitt, supra; Sun Oil Co. of Pa. v. City of Upper Arlington*, 55 Ohio App. 2d 27, 379 N.E.2d 266 (1977).

Restrictions on Size and Manner of Display

The first amendment protection accorded political and ideological signs is clearly not an obstacle to imposing reasonable display restrictions on such signs. Size, height, set-back, spacing, and other manner of display restrictions will be held constitutional as "time, place and manner" restrictions so long as the regulation reasonably relates to a legitimate public purpose (whether aesthetics or other public purposes such as traffic safety, tourism or property values), is content neutral, and is not an attempt to suppress the speech itself. *See, e.g., White House Vigil for The ERA Committee v. Clark*, 746 F.2d 518 (D.C. Cir. 1984) (upholding restrictions on size, construction and placement of signs in front of White House); *Candidates Outdoor Graphic Service v. City of San Francisco*, 574 F. Supp. 1240 (N.D. Cal. 1983) (upholding ordinance limiting the size and governing the manner of attachment of political signs on public property); *Fruner v. Cheltenham Township*, 545 F. Supp. 1292

(E.D. Pa. 1982) (upholding ordinance prohibiting affixing of signs to utility posts, street signs, or any other structures within rights of way of streets and highways). As indicated by the Supreme Court in *Taxpayers for Vincent*, the reasonableness of time, place and manner restrictions on signs is likely to be determined by whether regulation is unduly restrictive or forecloses channels for the communication of such expression.

Size and manner of display restrictions on political signs that favor one form of expression over another based on content will be held unconstitutional. *See, e.g., Lebron v. Washington Metro Area Transit Auth.*, 749 F.2d 893 (D.C. Cir. 1984) (restriction on political sign based on alleged deceptive or distorted content held unconstitutional); *Baldwin v. City of Redwood*, 540 F.2d 1360 (9th Cir. 1976) (upholding regulation of political signs on single parcel of land prohibiting signs larger than 16 square feet and prohibiting more than 80 square feet of sign area for all signs, but holding unconstitutional a prohibition of more than 64 square feet in aggregate sign area for any one candidate or issue since the latter restriction related to content of signs' message); *City of Lakewood v. Colfax Unlimited Ass'n, Inc.*, 634 P.2d 52 (Colo. 1981) (holding unconstitutional sign regulations which allowed some but not all types of political and ideological signs).

Similarly, the first amendment poses no obstacle to enforcing reasonable size and other manner of display restrictions on signs with commercial messages. Such restrictions will be upheld so long as they are content neutral, not unduly restrictive, and reasonably further a legitimate governmental objective. *See, e.g., Donrey Communications Co., Inc. v. City of Fayetteville*, 280 Ark. 408, 660 S.W.2d 900 (1983) (upholding set-back and 75 square feet size limitation on free-standing signs); *Krych v. Village of Burr Ridge*, 111 Ill. App. 3d 461, 444 N.E.2d 229 (1983) (upholding 120 square feet size limitation and 16-foot height limitation); *Hawkeye Outdoor Advertising, Inc. v. Bd. of Adjustment of Algona*, 356 N.W.2d 544 (Iowa 1984) (20-foot height limitation on billboards); *Singer Supermarkets, Inc. v. Hillsdale Bd. of Adjustment*, 183 N.J. Super. 285, 443 A.2d 1092 (1982) (attached sign not to exceed 10 percent of front facade). Commercial speech relating to a lawful activity which is not false or misleading is protected by the content-neutrality doctrine; thus, content-related regulation governing commercial signs will be held unconstitutional. *See People v. Mobile Oil Corp.*, 48 N.Y.2d 192, 397 N.E.2d 724, 422 N.Y.S.2d 33, 397 N.E.2d 724 (1979) (holding unconstitutional restrictions on signs relating to the price of gasoline); *Sambo's of Ohio, Inc. v. City Council of Toledo*, 466 F. Supp. 177 (N.D. Ohio 1979) (sign "Sambo's" may be distasteful with connotations of racial prejudice, but it is protected by the first amendment).

Content-neutral regulation of types of signs or manner of display is where such regulation reasonably furthers substantial public interests in aesthetics or other general welfare purposes. Restrictions on free-standing signs, flashing signs, or the use of searchlights in regard to either commercial or political expression are likely to be upheld as reasonable "time, place and manner" restrictions. Again, such restrictions cannot be unduly restrictive and must leave open ample alternative channels of communication for expression. *See, e.g., Robert L. Rieke Bldg. Co., Inc. v. City of Overland Park*, 232 Kan. 64, 657 P.2d 1121 (1983) (upholding ordinance which required special permit and restricted use of searchlights for commercial purposes and other "attention attracting devices" because it reasonably furthered traffic safety, aesthetics, and the protection of property values); *City of Portland v. Aziz*, 47 Or. App. 937, 615 P.2d 1109 (1980) (upholding ordinance which prohibited amplified noise disturbances between 10:00 P.M. and 7:00 A.M. as reasonable regulation of time and manner of speech).

Commercial vs. Noncommercial Signs

The Supreme Court in *Metromedia* indicated that bifurcated sign controls distinguishing between commercial signs (those advertising or promoting the sale of a product or service) and noncommercial signs (those involving political or ideological speech) is permissible so long as regulation does not grant commercial signs more favorable treatment than noncommercial signs. Recent court decisions since *Metromedia* have relied on this aspect of the opinion to hold sign controls unconstitutional which discriminated against political signs. *See, e.g., Norton Outdoor Advertising, Inc. v. Village of Arlington Heights*, 69 Ohio St. 2d 539, 433 N.E.2d 198 (1982) (ordinance prohibiting on-site noncommercial signs invalid).

Indeed, bifurcated regulation may be required for ordinances that attempt to limit signs in a residential district or other area. In view of the strong protection accorded political and ideological speech, it is unlikely that noncommercial signs may be prohibited. *See Metromedia, Inc. v. Mayor of Baltimore*, 538 F. Supp. 1193 (D. Md. 1982) (holding ordinance unconstitutional since its effect was to ban most noncommercial messages in urban renewal area). Despite the validity of such a distinction, bifurcated controls may pose interpretive problems in enforcement. *See City of Indio v. Arroyo*, 191 Cal. Rptr. 565, 143 Cal. App. 3d 151 (1983) (holding unconstitutional an ordinance which would have required the removal of a mural depicting Mexican heritage painted on the outside wall of a store, since the mural was ideological, not commercial, speech).

Off-Site vs. On-Site Signs

The Supreme Court in *Metromedia* ruled that a distinction between off-site and on-site commercial signs is permissible since businesses and the public have a stronger interest in allowing on-site signs to identify business locations and the products or services sold. This ruling by the Court has reinforced the validity of such a distinction in regulation which numerous state courts have also upheld this distinction. *See, e.g., City of Lake Wales v. Lamar Outdoor Advertising Ass'n,* 414 So. 2d 1030 (Fla. 1982); *Charter Township of Oshtemo v. Central Advertising Co.,* 125 Mich App. 538, 336 N.W.2d 823 (1983); *State v. Hopf,* 323 N.W.2d 764 (Minn. 1982).

Portable vs. Permanent Signs

A regulatory distinction between portable (including signs-on-wheels) and permanent signs, not addressed in *Metromedia,* has produced mixed results in recent court decisions. Some courts have upheld bans on portable or temporary commercial signs based on the view that such signs present greater safety and aesthetic problems. *See Rent-A-Sign v. City of Rockford,* 85 Ill. App. 3d 453, 406 N.E.2d 943 (1980); *Hilton v. City of Toledo,* 62 Ohio St. 2d 394, 405 N.E.2d 394 (1980). *See also Katin v. Lubbock,* 655 S.W.2d 360 (Tex. Civ. App. 1983) (affirming a summary judgment). But other decisions have held that there is no reasonable basis for such a distinction based on aesthetics or traffic safety, especially where free-standing permanent commercial signs are allowed. *See Dills v. Cobb County,* 593 F. Supp. 170 (N.D. Ga. 1984); *Signs, Inc. of Florida v. Orange County,* 592 F. Supp. 693 (M.D. Fla. 1983). A safer approach might be to allow attached or building facade signs but ban all free-standing commercial signs. *See Syracuse Savings Bank v. Town of DeWitt,* 56 N.Y.2d 671, 436 N.E.2d 1315, 451 N.Y.S.2d 713 (1982) (near total ban on free-standing commercial signs upheld).

Time Restrictions

Time restrictions on the display of commercial or political signs have not fared well in recent court decisions. Courts have found that such restrictions undermine a city's interest in traffic safety, since the longer signs remain the less distracting they are to motorists. *See Dills v. City of Marietta,* 674 F.2d 1377 (11th Cir. 1982) (holding unconstitutional ordinance limiting portable signs to 120 days) Pre-event time restrictions on "garage sale" signs in residential areas may be upheld in view of the interest in preserving the aesthetic character of the area. But pre-event or pre-campaign time restrictions on political signs are likely to be held unconstitutional as unduly restricting political speech or as favoring commercial over noncommercial speech. *See, e.g., City of Antioch v. Candidates' Outdoor Graphics Serv.,* 557 F. Supp. 52 (W.D. Cal. 1982) (holding unconstitutional ordinance limiting political signs to 60-day period before election); *Van v. Travel Information Council,* 52 Or. App. 399, 628 P.2d 1217 (1981) (same). *Contra Ross v. Goshi,* 351 F. Supp. 949 (D. Hawaii 1972) (upholding 60-day pre-election limitation); *Town of Huntington v. Estate of Schwartz,* 313 N.Y.S.2d 918 (1970) (upholding seven-week pre-election limitation).

Post-event or post-campaign time limitations on the removal of "For Sale," "Garage Sale," or even political campaign signs are likely to be upheld as reasonably furthering aesthetic interests in community appearance. *See Baldwin v. Redwood City,* 540 F.2d 1360 (9th Cir. 1976) (upholding 10-day post-election removal requirement); *Schoen v. Township of Hillside,* 155 N.J. Super. 286, 382 A.2d 704 (1977) (upholding restrictions on "For Sale" and "Garage Sale" signs).

Inspection and Removal Fees

The *Metromedia* decision did not address the constitutionality of permit, inspection or removal fees imposed on commercial or political signs. If reasonable, such fees are likely to be upheld, particularly as applied to commercial advertising. *See Robert L. Rieke Bldg. Co., Inc. v. City of Overland Park,* 232 Kan. 64, 657 P.2d 1121 (1983) (upholding $100 permit fee for commercial use of searchlights). However, inspection and removal fees, particularly as applied to political signs, are likely to be held unconstitutional when such fees are not directly related to the actual

ZONING AND PLANNING
LAW REPORT

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cost of inspection and removal. *See Baldwin v. Redwood City, supra* (holding unconstitutional one dollar inspection fee and five dollar refundable removal fee per political sign since fees were not shown to relate to actual costs). In addition, fees are likely to be held unconstitutional where they are found to impose a chilling effect on political expression. *See People v. Middlemark*, 100 Misc. 2d 760, 420 N.Y.S.2d 151 (1979) (holding unconstitutional $1,000 performance bond and $50 cash deposit to obtain permit to erect political wall sign).

Elimination and Amortization

The *Metromedia* decision did not address issues related to elimination of illegal or lawful nonconforming signs. Protection of private property rights is more relevant to this issue than first amendment considerations. Recent court decisions continue to rule that illegally erected signs may be eliminated as a public nuisance so long as notice and hearing procedures satisfy due process requirements. *See, e.g., Young Electric Sign Co. v. State*, 654 P.2d 1028 (Nev. 1982). Case law indicates that amortization of existing nonconforming signs is being used more frequently in sign regulation and court decisions since *Metromedia* have upheld amortization provisions so long as the grace period for removal is reasonable. *See Donrey Communications Co. v. City of Fayetteville, supra* (four years); *Mayor of New Castle v. Rollins Outdoor Advertising, Inc.*, 475 A.2d 355 (Del. 1984) (three years); *Village of Skokie v. Walton on Dempster, Inc.*, 119 Ill. App. 3d 299, 456 N.E.2d 293 (1983) (seven years); *Syracuse Savings Bank v. Town of DeWitt*, 56 N.Y.2d 671, 451 N.Y.S.2d 713, 436 N.E.2d 1315 (1982) (four years and nine months); *State v. Sanquinetti*, 141 Vt. 349, 449 A.2d 922 (1982) (five years).

However, the Indiana Supreme Court has recently ruled, as have earlier courts in Tennessee and Ohio, that local communities may not amortize nonconforming uses based on state statutory and constitutional provisions. *Ailes v. Decatur County Area Planning Comm'n*, 448 N.E.2d 1057 (Ind. 1983). Similarly, in New Hampshire the court has ruled that aesthetic considerations alone are not sufficient to justify amortization of nonconforming signs. *Loundsbury v. Keene*, 122 N.H. 1006, 453 A.2d 1278 (1982).

A still unresolved issue is whether a 1978 amendment to the Federal Highway Beautification Act and implementing state legislation preempts local amortization of nonconforming signs near highways. New York, Texas and Maine courts have ruled that the Act itself does not preempt local amortization. *Suffolk Outdoor Advertising Co. v. Town of Southhampton*, 60 N.Y.2d 70, 455 N.E.2d 1245, 468 N.Y.S.2d 450 (1983); *State ex rel. Dep't of Transp. v. National Advertising Co.*, 387 A.2d 745 (Me. 1978); *Lubbock Poster Co. v. City of Lubbock*, 569 S.W.2d 935 (Tex. App. 1978), *cert. denied*, 444 U.S. 833 (1979). However, courts in Florida, New Mexico, and California have ruled that the Act and implementing state legislation preempt local amortization of billboards near highways. *Lamar-Orlando Outdoor Advertising v. City of Ormond Beach*, 415 So. 2d 1312 (Fla. App. 1982); *Battalini v. Town of Red River*, 669 P.2d 1082 (N.M. 1983); *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848, 610 P.2d 407, 164 Cal. Rptr. 510 (1980).

Whether a local amortization requirement can constitutionally be applied to remove nonconforming political or ideological signs is a question not yet addressed by the courts. In view of the Supreme Court's ruling in *Taxpayers for Vincent* that both traffic safety and aesthetics are substantial enough interests to justify a curtailment of a form of political expression, an amortization requirement is likely to be held valid as applied to a political or ideological sign so long as the underlying prohibition or restriction is itself found to be constitutional—a position essentially adopted by the New York Court of Appeals. *See Suffolk Outdoor Advertising Co. v. Town of Southhampton, supra* (power of amortization extends to scope of police power).

Conclusion

The U.S. Supreme Court and virtually all state courts have found that an aesthetic interest in community appearance, either alone or when linked with non-aesthetic public purposes such as traffic safety, property values or tourism, is a sufficient governmental interest to support reasonable content-neutral regulation of both commercial and noncommercial signs. An important factor in determining the constitutional validity of an ordinance is likely to be the extent to which reviewing courts follow the approach of the Supreme Court in *Metromedia* and *Taxpayers for Vincent* in refusing to "second guess" reasonably plausible legislative judgments that regulation is likely to further aesthetic or other supporting public purposes, at least in circumstances where there is no hint of bias or censorship. In this regard it is significant to note that most recent court decisions invalidating sign controls since *Metromedia* have been rendered by lower federal courts—courts that are bound by Supreme Court rulings. *See, e.g., Rhodes v. Gwinnett County*, 557 F. Supp. 30 (N.D. Ga. 1982) (holding ordinance limiting each business to one on-premise sign unreasonable since it allowed a single offensive sign while prohibiting two or more inconspicuous signs). State courts in recent years generally have deferred to reasonable or fairly debatable legislative judgments in this area, particularly in states such as California, Florida, Minnesota, Massachusetts, New Jersey, and New York, which have a strong tradition of recognizing aesthetics as a legitimate basis for controls on signs and other land uses.

Local controls on signs and billboards that have been found invalid are generally those which either banned or unduly restricted political or ideological signs on private property or accorded commercial signs more favorable treatment than political or ideological signs. The latter is an impermissible inversion in the hierarchy of first amendment values that can arise in a variety of forms of sign regulation—bans, restrictions, fees or removal requirements. These problems generally can be avoided or corrected in drafting sign control ordinances by simply tailoring the provision to narrow or enlarge its scope.

RECENT CASES

Ex Parte Meeting Voids Zoning Amendment

A private meeting between a developer and a quorum of the local legislature was held to violate the Alaska Open Meetings Act, Alaska Stat. §§ 44.62.31 *et seq.*, and require the invalidation of a rezoning ordinance adopted at a subsequent public hearing. The state supreme court ruled that the Act defines the word "meeting" to include every step of the deliberative and decision-making process during the transaction of public business. Since there was no "substantial reconsideration" of the issue at the public hearing, the court found that invalidation would best serve the public interest. *Brookwood Area Homeowners Ass'n, Inc. v. Municipality of Anchorage*, 702 P.2d 1317 (Alaska 1985).

The meeting, which took place at the developer's office, concerned the issues of density, drainage and buffer zones, and resulted in limitations on the developer's proposal. The court stated that the fact that a legislative quorum was present did not in itself violate the Act, but noted that the developer would have been free to meet individually with each member to discuss the project and lobby for passage of the rezoning ordinance. The court then found that the meeting was not merely a harmless violation of the Act, because the plaintiff association charged that it would have presented different testimony at the public hearing had it known the content of the developer's private presentation and the facts showed that the legislature's ultimate decision was dependent upon that presentation. Turning to the remedy, the court stated that subsequent remedial action, which shows a "substantial reconsideration" of the issue, may validate an otherwise void action. But no such reconsideration was made here, because the legislative members testified that they saw nothing wrong with their private meeting and refused to disclose matters discussed at the meeting. The court concluded that a de novo consideration of the development proposal could be achieved only by invalidating the amendment.

Relocation of Nonconforming Use to Unused Portion of Property Refused

The Supreme Court of Pennsylvania has ruled that a landowner's conveyance to the federal government, in lieu of condemnation, of land upon which nonconforming buildings rested constituted an extinguishment of the nonconforming use. In the same 4-3 decision, the court ruled that the relocation of the use did not constitute a "natural expansion." Consequently, the landowner could not transfer the use to another part of the parcel not previously devoted to that use. *Bachman v. Zoning Hearing Bd. of Bern Township*, 494 A.2d 1102 (Pa. 1985).

Two of the landowner's 40 acres contained eight bungalows rented for year-round and summer use. He subsequently conveyed to the United States, by deed in lieu of condemnation, 32 acres of land to be used for a federal dam project and moved the bungalows to the remaining eight acres. The court noted that the natural expansion of a nonconforming use is a state constitutional right, but held that the owner here had failed to establish that his relocation was a natural expansion. Although he testified that he had previously considered developing the eight acres in question, the court said that evidence of an alleged nonconforming use must exist outside the property owner's mind. Had the owner previously sought to add more bungalows to existing ones, the result might have been different. In a statement which is probably broader than intended, the court added that a nonconforming use cannot "be moved from its original setting." The court also held that an owner who sells property to the government is in the same position as any victim of eminent domain. Payment serves as compensation for the loss of a nonconforming use. The owner could not transfer the extinguished use, since that would effectively constitute the initiation of a prohibited use.

Neither Financial Analyst Nor Economist Is a "Professional Person" for Occupancy Purposes

The District of Columbia Court of Appeals upheld a zoning board's determination that a businessman who described his occupation as "accountant, financial analyst and economist" did not qualify as a "professional person" entitled to a certificate of occupancy in a special purpose zone. The zoning regulation permitted office use for a "chancery, international agency, non-profit organization, labor

STATEMENT SUBMITTED BY SENATOR INOUYE
Hearing on S. 2405
Committee on Environment and Public Works
May 20, 1986

The National Taxpayers Union press release of May 20th is replete with incorrect facts, exaggerations, and over simplifications. I would like to address the following allegations made by the NTU, and provide more accurate information with regard to them:

1) H-3 costs $1 billion; 10 miles at $100 million per mile

Rebuttal: H-3's total cost is $742 million, which includes engineering and right-of-way costs. The total length of H-3 is 16.1 miles, 5.4 of which has been completed. This translates into a cost of $49 million per mile.

2) H-3 is the most expensive per mile segment of the Interstate System ever built.

Rebuttal: H-3 is not the most expensive segment. Following is a list of more expensive per-mile segments: (Source: Interstate Branch, Federal Highway Administration)

Project	Location	Length	Cost per Mile
I-95	Baltimore	1.7 miles	$518 million
I-90	Massachusets	3.2	198
I-264	Norfolk, VA	0.8	119
I-90	Seattle	6.4	117
I-595	Florida	4.2	109
I-295	Washington, D.C.	1.3	97
I-664	Virginia	7.0	80
I-676	Pennsylvania	1.6	78
H-3 **(uncompleted section)**	**Hawaii**	**10.7**	**69**
I-105	Los Angeles	17.3	64
H-3 **(Total segment)**	**Hawaii**	**16.1**	**49**

It should also be noted that H-3, because of geographic and demographic considerations, requires the digging of a one-mile Trans-Koolau Mountains Tunnel which costs $296 million. Without this cost, the per-mile cost of H-3 drops to $46 million.

It should also be noted that the original cost of H-3, as estimated in December, 1975, was $263.3 million (excluding right-of-way and preliminary engineering costs). Legal delays and other efforts to block H-3 have resulted in a tripling of this original estimate.

3) H-3 has an inequitable benefit-cost ratio of .22 to one

Rebuttal: A 1979 Computer study by the Office of Highway Planning, Urban Planning Division, FHWA determined that H-3 has a benefit-cost ration of 1.05 with 30% transit diversion and 1.26 with 10% transit diversion. (The present transit use on the Pali and Likelike Highways is 15%)

The FHWA method of computing benefit-cost is site specific and takes into account operating costs, travel time value, and accident costs. Even higher benefit-cost ratios could be computed by accounting for the reduction in the peak period on existing highways and intersections.

The benefit-cost ratio is only an economic tool used by the FHWA to assist in decision making based also on a total planning and evaluation process including social and invironmental factors.

4) If constucted, H-3 would prevent other states from receiving federal funds for more essential projects

Rebuttal: This allegation is unfounded and unsupported by the Department of Transportation or Congress. The cost of H-3 represents only 2.8% of the total cost to complete the Interstate System nationwide (DOT estimate). The FHWA reports that the Highway account balance as of September 30, 1985 was $10.362 billion, with revenues estmated at 13.07 billion in FY86. Obligational authority expected for FY86 is $13.125 billion.

5) The Supreme Court upheld the Ninth Circuit Court decision

Rebuttal: The Supreme Court declined, without comment, to hear the case. They did not uphold the decision.

FOR IMMEDIATE RELEASE:
MAY 20, 1986

FOR FURTHER INFORMATION CONTACT:
SUSAN ZECCHIN (202) 543-1300

NATIONAL TAXPAYERS UNION OPPOSES $1 BILLION "FREE"WAY

The National Taxpayers Union (NTU) announced today that it will support Mayor Frank Fasi of Honolulu and other Hawaiian elected officials of both parties who are opposed to the construction of Hawaii's Interstate H-3. Jill Lancelot, Director of Congressional Affairs stated that "American taxpayers should not have to shell out $1 billion to pay for this economically wasteful and environmentally damaging highway project."

Interstate H-3 has been found to violate federal law (section 4 (f) of the Department of Transportation Act) by the 9th Circuit Court of Appeals because it would "constructively take" park lands. The U.S. Supreme Court upheld this ruling.

NTU is fighting to halt this unnecessary expenditure by opposing any measure that might grant special exemption to this outlawed highway. While H-3 may have been sensible when conceived in 1960, today, because of a major shift in development, it will do nothing to solve the desperate transit needs of Hawaii.

NTU opposes Interstate H-3 for several reasons:

- It would be the most expensive per-mile segment of interstate highway ever built: ten miles at $100 million per mile
- It has an inequitable benefit-cost ratio: .22 to one
- If constructed, it will prevent states across the country from receiving federal transportation funds for far more essential projects. (The Congressional Budget Office has indicated that there is already a $2 billion annual shortfall between current highway authorization and revenue.)
- If exempted from existing law, H-3 will impact all 50 states, setting a dangerous precedent for every ill-conceived pork barrel project that cannot meet the test of federal law

The National Taxpayers Union cannot find any justification in paving Interstate H-3 with hundreds of millions of tax dollars. Lancelot further declared that "We must adhere to Gramm-Rudman guidelines and trust that the Congress will see to it that no exemption from any federal law will be permitted for this fiscally inappropriate and environmentally unsound freeway."

The National Taxpayers Union, representing 150,000 members nationwide, is a non-profit, non-partisan organization whose aim is to reduce federal spending levels and control the careless misuse of tax dollars.

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PR2:24

SUBMITTED BY SENATOR INOUYE
Hearing on Highway Bill
May 20, 1986
Committee on Environment and Public Works

Mr. Chairman, following is a list of the actions the State DOT is taking or is planning to take to assure environmental protection and advance mitigation of impacts related to the construction of H-3. This list comes from the Environmental Impact Statement submitted by the DOT on September 28, 1982 in the Fianl Second Supplement EIS.

Measures To Minimize Harm

To minimize the adverse environmental impacts resulting from the construction of H-3, FHWA, in consultation with the State of Hawaii, is including the following measures as part of the proposed project:

1. Haiku/Omega Station Collocation
   - A. Field measurements of the Omega signal, electric field strength at the Omega signal, and electric current prior to, during and after construction as jointly agreed to with the U. S. Coast Guard.
   - B. Permanent overhead metal shielding will be provided over the roadway to meet a maximum

field strength of 200 volts/meter at 10.2 KHz. A small physical model will be tested as part of the design of the shielding.

C. Development of construction contract provisions to protect construction workers such as:

(1) Grounding of large construction equipment

(2) Procedures for handling blasting caps

(3) Procedures for refueling operations.

D. During and after the installation of the electro-magnetic shield some limited field testing for shock hazards will be accomplished.

E. Signs will be installed on H-3 advising motorists of the Omega signal and advising pacemaker wearers of an existing electromagnetic field.

2. Ho'omaluhia Park

A. Construction of earth berm or other noise barriers with typical height above the roadway surface of twelve feet.

B. Landscaping to visually shield H-3 from the Park. The landscape design will be coordinated with the City and County Department of Parks and Recreation.

C. Reduction of erosion and sedimentation resulting from construction of the facility through use of erosion control measures such as settlement ponds, jute mesh, mulching, etc..

D. Access from the park to equestrian and hiking trails on the upland side of H-3 will be provided via two underpass structures.

E. Direct access to Ho'omaluhia Park via an underpass and connecting ramps is considered a future design option warranting further study.

F. A program to monitor the effectiveness of erosion control measures will be implemented. If, during the construction of H-3, the monitoring indicates that the design sediment rate for the flood control dam is being exceeded, the State and FHWA will remove the excess sediment and implement additional erosion control measures.

3. Pali Golf Course

A. Construction of either typically three foot jersey noise barriers or five foot earth berms to reduce highway generated noise levels within the golf course.

B. Construction of retaining walls to minimize encroachment on the golf course. Moss rock facing will be used if the wall is visible from the golf course.

C. Reduce erosion and sedimentation resulting from construction through proper design of control measures, as well as a program to monitor effectiveness of the erosion control measures.

D. Coordinate design activities with the City and County Department of Parks and Recreation.

E. Landscaping affected by construction will be restored.

F. During construction, temporary fencing will be installed to maintain security. Existing fencing will be retained or replaced.

4. Floodplains

A. The highway will be elevated throughout the makai portion of the North Halawa Valley to mitigate negative impacts to the floodplain.

B. The relocated portion of the North Halawa Stream will be designed to convey a flow of equal to, or greater than, a 100 year flood.

C. Crossings of the natural portion of North Halawa Stream will be by bridge with no piers within the stream channel.

5. Archaeological Sites

A. H-3 will be designed to avoid known archaeological sites. An archaeologist will be on-site during construction of H-3. Archaeological site G5-81 will be protected during construction. If any archaeological sites discovered during construction, the 23 CFR 771.135(f) procedures will be followed.

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COMMANDER IN CHIEF
U.S. PACIFIC COMMAND
CAMP H.M. SMITH, HAWAII 96861

8 April 1986

Dear Mr. Yamasaki,

As you requested, we have reviewed the Hawaii State Department of Transportation's (DOT) position on the H-3 issue. It appears that the Department of Defense (DoD) and DOT positions are essentially in agreement. We recently contacted Mr. Kusumoto from Region Nine of the Federal Highway Administration and conveyed the following position:

> The DoD supports the construction of Interstate H-3 Freeway. A limited access highway connecting the Kaneohe Marine Corps Air Station with the Pearl Harbor Naval Base will greatly facilitate the movement of people and material from the Air Station to Pearl Harbor. In the event of a rapid deployment, the highway would be beneficial in supporting our nation's defense needs.

As senior military commander in the Pacific, I appreciate the opportunity to participate in issues directly impacting our military posture and would like to add my support to the DoD position on this project.

Sincerely,

Ronald J. Hays
RONALD J. HAYS
Admiral, U. S. Navy

Mr. Wayne J. Yamasaki
Department of Transportation
State of Hawaii
869 Punchbowl Street
Honolulu, Hawaii 96813

DEPARTMENT OF THE NAVY
NAVAL AIR STATION
BARBERS POINT, HAWAII 96862-5050

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Mr. Wayne J. Yamasaki
Director, Department of Transportation
State of Hawaii
686 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Yamasaki,

Thank you for your letter of April 7, 1986 concerning the DOT's position on the H-3 issue. I wish to share with you my unqualified support for the Interstate H-3 construction. Completion of this segment will not only ease the current and projected traffic congestion, but will enhance the defense posture of the nation as the highway will serve as a vital link between Kaneohe Bay Marine Corps Air Station and Naval Air Station Barbers Point. I base my position on this issue on a thorough and objective analysis of all relevant aspects that I conducted over the past two years.

I appreciate the opportunity to comment on this most critical issue. Again, accept my complete support in your efforts to make H-3 a reality. Completion of H-3 is in the best interests of all concerned.

Sincerely,

H. B. ROBINS, JR.
Captain, USN
Commanding Officer

Naval air power - in defense of freedom

GEORGE R. ARIYOSHI
GOVERNOR

MAJOR GENERAL ALEXIS T. LUM
DIRECTOR OF CIVIL DEFENSE

JIM COREY
VICE DIRECTOR OF CIVIL DEFENSE

STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE DIRECTOR OF CIVIL DEFENSE
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816

PHONE (808) 734-2161

DIRECTOR'S OFFICE
APR 8 1 [illegible] '86
DEPT. OF TRANSPORTATION

April 4, 1986

HICDTI

The Honorable Wayne J. Yamasaki
Director
Department of Transportation
State of Hawaii
Honolulu, HI 96813

Dear Mr. Yamasaki:

The Department of Transportation is to be commended for its clearly stated and comprehensive position statement concerning the H-3 construction.

The Department of Defense supports fully the long overdue completion of that vital trans-Koolau communications link. Not only would it serve the primary purpose of connecting the military centers of Kaneohe Bay and the Pearl Harbor/Hickam complex, but would serve to relieve the day-to-day concerns of Oahu emergency managers regarding the critically overloaded conditions on the Pali and Likelike Highways.

Further, the inherent limitation of these two trans-Koolau highways imposes severe restrictions on the efforts of State Civil Defense to accomplish population protection planning. Whether the population requires evacuation from leeward to windward due to a radiological disaster, or from windward to leeward for off-island evacuation, a larger number of our population will unnecessarily remain at risk for longer periods due to these transportation limits. If one considers the possibility of either the Pali or Likelike being restricted for official transportation only in the event of a national emergency, the planning for reducing the risk to the population becomes impossible as a practical matter.

Damage by earthquake or major landslide to either existing cross corridor artery can severely limit emergency management response to an ever increasing population.

It is our earnest desire to see the H-3 project completed. Please advise how we may assist in this endeavor.

Sincerely,

ALEXIS T. LUM
Major General, HARNG
Director of Civil Defense

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY WESTERN COMMAND
FORT SHAFTER, HAWAII 96858-5100

REPLY TO
ATTENTION OF

April 22, 1986

[illegible]

Wayne J. Yamasaki
Director
Department of Transportation
State of Hawaii
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Yamasaki:

Thank you for the April 7 letter regarding the Department of Transportation (DOT) position on the H-3 issue.

I was pleased to note that the DOT stance generally coincides with the Department of Defense (DOD) position conveyed by Admiral Hays. I, too, fully agree with the need for Interstate H-3 from the viewpoint of military preparedness and day-to-day logistical operations.

On Oahu, the Army has responsibility for providing common use land transportation for each of the services. Daily, we haul Army, Air Force, Navy and Marine Corps cargo and personnel throughout the island. A cross-island, limited access highway like H-3 would greatly increase efficiency and enhance safety of these operations, both in peacetime and upon mobilization.

Please add my support to that of the DOD and Commander in Chief, Pacific. As the senior Army commander in Hawaii, I appreciate this opportunity to comment on a local issue impacting on military readiness.

Sincerely,

Charles W. Bagnal
Charles W. Bagnal
Lieutenant General, U.S. Army
Commanding General

TESTIMONY OF

D. G. ANDERSON

ACTING MAYOR AND MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU

Tuesday, May 20, 1986

United States Senate

Transportation Subcommittee

Committee on Environment and Public Works

REGARDING THE FEDERAL AID HIGHWAY ACT OF 1986

TESTIMONY

Mr. Chairman and Members of the Committee. My name is D. G. Anderson. I am Acting Mayor and Managing Director of the City and County of Honolulu. I am testifying on behalf of Mayor Frank F. Fasi and the City Administration.

For your information, the City and County of Honolulu is coterminous with and governs the entire island of Oahu, with over 805,000 citizens including more than 120,000 military personnel and dependents, plus 80,000 tourists on any one day. We are fully supportive of a comprehensive Federal Aid Highway Act similar to that being proposed by this Committee. In times of budget restraints, we at the local level of government need the maximum amount of flexibility in federal programs in order to fund those projects which meet local priorities.

It is for this reason we oppose a waiver of Section 4(f) which is being suggested by our State Department of Transportation for H-3 in Honolulu. H-3 is an $800 million freeway, fraught with planning, environmental, construction and legal problems. But most of all H-3 **DOES NOT DEAL WITH OAHU'S MAJOR TRANSPORTATION NEEDS OF TODAY OR TOMORROW.**

A decision to withdraw H-3 and substitute other more relevant transportation projects is a Honolulu matter. An arbitrary waiver of a long standing federal law directed solely at a Honolulu project will preempt both the legal process and the local political process and deprive us of much needed funds to address our local transportation needs. We respectfully disagree with Senators Inouye and Matsunaga that the court was irresponsible and that opponents are obstructionists. In fact, we support the court's opinion that the most "prudent and feasible" alternative is to not build H-3.

But we, like other cities, do not want to lose money due us for dealing with our transportation problems and that is why Congress approved the substitute program. The $800 million or more it will take to serve the projected 40,000 automobile trips a day in the Year 2000 is not "cost-effective." The money should be diverted to build facilities which will serve the Leeward side of the island where the majority population lives.

Instead of $800 million for H-3, we can improve existing Pali and Likelike Highways at a fraction of the cost in order to handle the relatively minor traffic crossing the mountains from the Windward side. This is the most "prudent and feasible" alternative of which the Ninth Circuit Court spoke when halting any further construction of H-3.

Our concerns for H-3 and our preference for a substitute program are based on the very low cost-benefit ratio of H-3. For instance:

- **H-3 would benefit only a small percentage of Oahu's commuting public.** The $800-plus million (Windward-Honolulu) highway will only relieve cross-island traffic in a very limited way. It will be utilized by only a projected 40,000 automobile trips daily by the Year 2000. On the other hand, the majority of Oahu's population lives on the Honolulu-Leeward side and must deal with traffic congestion of a longer duration during peak hours than experienced by Windward commuters on the existing Pali and Likelike highways.

- **H-3 is no longer consistent with long-term transportation and planning needs on Oahu.** State and City plans and policies call for restricting growth in the limited land area of Windward Oahu and encouraging growth in the central and southwest plain. Only 120,000 people live on the Windward side while nearly 700,000 residents plus tourist and military personnel reside in the Honolulu-Leeward area.

- **H-3 does not serve the majority needs of the Windward commuter.** As presently aligned, H-3 meets the H-1 freeway on the Leeward side at Halawa Interchange which is still Ewa (westerly) of the most critical and congested portion of H-1. Windward travelers will experience tremendous congestion once they have crossed the Koolaus since they will still be eight miles from downtown Honolulu when they connect with H-1--a distance equal to the entire trip on Pali Highway.

- Alternative projects using the same funding source will benefit more commuters. Improving Pali and Likelike highways would be a more prudent and feasible alternative to H-3. Immediate and short-term improvements to these highways can be done faster and cheaper than constructing H-3. In addition, the City proposes to improve city-wide highway bottlenecks, build grade-separated facilities at key intersections, improve on- and off-ramps at key points on H-1, and eventuallly supplement our highways with a grade-separated rail transit system.

- Nine elected Neighborhood Boards, representing 33 percent of the population on Oahu, have voted to oppose the H-3 project. In addition, a number of other community organizations and environmental groups have also spoken out publicly in opposition to H-3. Two of our three newspapers have editorialized against H-3 and the third is in favor of the substitute program if H-3 is not built. See Section A - Community Opposition.

I urge the Subcommittee to consider the impact of a national waiver on this essentially local matter, and to respect the more than two decades of community debate which has brought this outmoded project to a halt. Please refrain from enacting extraordinary measures to contravene what has been a painful, but now decisive, process of local initiative.

SECTION A -- COMMUNITY OPPOSITION

Opposition to Interstate H-3
by the
People of the Island Of Oahu

The City and County of Honolulu Government is coterminous with and governs the entire Island of Oahu. Opposition to the construction of Interstate Highway H-3 has been voiced by editorials in Honolulu's principal news journals and by a large number of organizations representing a significant percentage of the island's population. On the other hand, favorable comment is generally limited to those who would use the freeway or to the construction industry which would build it.

The expenditure of an estimated $800 million to benefit such a small number of users on an island with a population of 805,000 is the reason for much of the community opposition. In addition, further objections are raised by those concerned about the preservation of historic sites and the ecological system through which the highway would pass. Still other opponents are convinced of the superior value of projects which could be substituted for H-3 using the funds available for improvements serving many more residents, if the highway were withdrawn from the Interstate Highway Trust Fund.

ELECTED OFFICIALS AND COMMUNITY ORGANIZATIONS

The following lists of organizations opposing H-3 and/or favoring substitution projects are (1) locally elected officials, including Neighborhood Boards which are officially designated and funded by the City and County Government, (2) issued-oriented, island-wide, volunteer organizations, and (3) community centered groups.

HONOLULU CITY COUNCIL

The Honorable Marilyn Bornhorst, Chair
The Honorable Welcome Fawcett, Chair, Transportation Committee
The Honorable Patsy Mink, Majority Leader

NEIGHBORHOOD BOARDS

Community Represented	Population
Ewa	35,585
Hawaii Kai	25,603
Kahaluu	11,782
Kalihi-Palama	40,144
Koolauloa	10,983
Mililani	26,134
Pearl City	42,577
Wahiawa	41,562
Waipahu	33,927
TOTAL	268,297

33% of Island Population

GENERAL MEMBERSHIP ORGANIZATIONS

Organization	Membership
Conservation Council for Hawaii	500
Hawaii Audubon Society	2,000
Hawaii Science Teachers Association	200
Hawaii Trail and Mountain Club	Unknown
Hawaii's Thousand Friends	700
Life of the Land	450
Na 'Opio Aloha 'Aina	Unknown
Pig Hunters Association of Hawaii	Unknown
Sierra Club, Hawaii Chapter	2,050

COMMUNITY ORGANIZATIONS

Organization	Membership
East Oahu County Farm Bureau	151 Families
Haiku Plantations Association	178 Families
Haiku Village Community Association	1,000
Hui Malama 'Aina O Ko'olau	105
Kaneohe Outdoor Circle	125
Waiahole Waikane Community Association	100 Families

EDITORIAL OPPOSITION

Opposition to H-3 and/or support of developing alternative transportation projects has been expressed by both of Honolulu's principal daily newspapers, and by the island's primary suburban weekly journal. Quotations presenting their sentiment follow, and the complete editorials are attached.

The Honolulu Advertiser
Average daily circulation: 87,000

> ". . . H-3, an expensive and outmoded idea the Ariyoshi administration refuses to let go of . . . the best way to (prevent the loss of H-3 funds) is to request the transfer of H-3 funds and move ahead with listing alternative uses for the money that can benefit all Hawaii's commuters."
>
> April 5, 1986

> "Governor Ariyoshi . . . has a loser in H-3, even if it somehow got built. His best choice -- the one best for Oahu's people -- is to give up on H-3 and start cooperating on the obviously better uses for the federal funds."
>
> March 10, 1986

The Sun Press
Average weekly circulation: 107,000

> "The Sun Press in the past has questioned the use of the federal monies for a third trans-Koolau freeway. We said editorially in January that Fasi was on the right track when he withdrew his support for H-3 and said it would be better to use the money to improve what we have and to construct new highways on the Leeward side of the island, where they will be needed.
>
> March 27, 1986

The Honolulu Star-Bulletin
Average daily circulation: 200,000

> ". . . the issue here is not H-3 or mass transit. It is preventing more than $700 million from being forfeited. There are many other uses to which that money could be put, and our state and city officials ought to sit down and decide what they are."

March 19, 1986

SECTION B - TECHNICAL OBJECTIONS

The following detailed comments clarify and support the City's position:

1. Up until December 1985 the City had never opposed the construction of H-3. In spite of the Mayor's personal opinion that H-3 has never been an appropriate project for solving Oahu's transportation problems, the City of Honolulu has not been involved in the fight between the State of Hawaii and the opponents of H-3. The Mayor previously stated that he would support whatever decision was made by the courts. Therefore, after the Ninth Circuit Court rejected H-3 because of Section 4(f) of the U. S. Transportation Act and when the State's appeal to the U. S. Supreme Court was also rejected, the City accepted this decision as final and agreed with the court's premise that improvements to the existing Pali and Likelike Highways were the most "prudent and feasible" alternative routes to H-3. Given the deadline of September 30, 1986 to make a withdrawal and substitution decision, it was proper and appropriate to request the Governor of Hawaii to withdraw the project and to submit a program of substitute projects in cooperation with the City of Honolulu, which would deal with the real transportation problems facing Oahu.

2. In spite of the optimism expressed by the Hawaii Department of Transportation, there has never been an exception made to the Section 4(f) provision, for any transportation project funded with U.S. DOT money. The closest example was Franconia Notch in New Hampshire where a 4-lane interstate freeway was cancelled and a 2-lane parkway was substituted and built with interstate funds.

3. September 30, 1986 is the absolute deadline for the Governor of Hawaii to withdraw H-3 and to propose substitute projects. The Governor can continue to seek the approval of H-3, but must do so at the risk of losing all the money programmed for construction. Thus, September 30 is the last chance to capture the estimated $716 million of Federal funds for other much needed transportation projects.

4. H-3 is no longer consistent with the long-term transportation needs of Oahu. State and City plans and policies call for restricting growth on the limited land area of Windward Oahu and encouraging it in the central and southwest plains. Currently, nearly 700,000 people, plus approximately 80,000 tourists on any given day, reside on the Leeward growth area and need transportation. On the other hand, only 120,000 live in the Windward area to be served by H-3. The projected growth for the Year 2000 in the central area of the island is an additional 76,000 persons versus only 18,000 on the Windward side. Yet, there are no plans for major highway improvements on H-1--the principal arterial serving the central corridor, except for adding one new lane on portions of H-1 and hopefully instituting special lanes for high occupancy vehicles (HOV).

5. H-3 is not the best trans-Koolau transportation solution. Improvements to existing Pali and Likelike highways is the most prudent and feasible alternative solution. Immediate- and short-term improvements to Pali and Likelike Highways can more than suffice and be done sooner and cheaper than H-3. H-3, if built, would not be completed and ready for operation for 8 to 10 years.

6. Congestion on Pali and Likelike Highways, while inconvenient, is no worse than congestion on most of the major arteries serving Honolulu. In fact, peak hour congestion on Pali and Likelike highways is of a shorter duration than on other major Oahu highways such as: H-1, King Street, Beretania Street, Nimitz and Kalanianaole Highways. For example, it is possible to travel the 8 miles from the H-1 freeway on Likelike to Castle High School in 10 minutes any time other than in peak hour.

7. Pali and Likelike Highways are only half used. Currently, morning peak hour traffic traveling to central Honolulu on both Pali and Likelike Highways is running in only one direction at more than 85 percent of the total peak hour traffic. This leaves two lanes out of the four on each highway virtually unused during peak hours. Improvements to these highways, including the use of contra flow lanes can work, thereby increasing the peak hour directional flow by two lanes or equal to that of H-3.

8. H-3 does not even serve the majority needs of the Windward traveler. On the contrary, H-3 meets H-1 on the Leeward side at the Halawa Intersection which is still Ewa of the most critical and congested portion of H-1. This will greatly aggravate traffic now moving Diamond Head from central and Ewa Oahu in the morning peak hours, making it virtually impossible to travel into Downtown Honolulu or any destination Diamond Head without experiencing much greater congestion and delay than on Pali or Likelike Highways. Not only will Windward travelers experience tremendous congestion once they have crossed the Koolaus, but they will still be 8 miles from their Downtown destinations, and caught in even much worse congestion.

9. Few people really understand the issue; and, worse yet, few on the Windward side really know where H-3 is supposed to go. They have been lulled to believe that H-3 would "solve the Windward traffic problems," when in fact it terminates at the most congested portion of H-1, far from where "they want to go" and adding further aggravation to the most serious bottleneck we have on Oahu.

10. How can we justify a project estimated to cost over $800 million which will serve only 40,000 trips a day (if you use an optimistic estimate) when we have no plans or money for improving the congestion problem of over 700,000 people, plus tourists, living and working on the Leeward side?

11. The State says other monies may be available for substitute projects--but if so, they have not been programmed. One reason is that local matching funds of around $70 million have been committed to H-3. If other monies are available, they have not been used to undertake much needed improvements. There have been no major improvements on Pali and Likelike intersections, at School Street, Kahekili Highway and Kamehameha Highway during the past 15 years. Yet the primary justification for H-3 has been to relieve the increased congestion on these highways. If other funds are available, it should have been spent to improve these highways and for other projects listed in the City's substitute program.

12. $800 million for construction of substitute projects will benefit the economy as much and probably more than H-3. In fact, more jobs and more contractors and suppliers will be involved in the many substitute projects thereby spreading the workload. Certainly more citizens and commuters will benefit from the substitute projects. The State Department of Transportation claims that $100 million worth of contracts are ready to go out for construction in a few months. They list this as a reason to proceed with H-3. Based on the promise that "H-3 will solve Windward Traffic Problems," no action has been taken on Pali and Likelike Highways for 10 years or more. The federally mandated TIP (Transportation Improvement Program) currently includes over $300 million worth of projects. Assuming the State has been moving ahead, they should be ready to go out for construction on a number of projects in a few months. In addition, the TIP would have additional projects placed on it from the City's list which includes highway improvements and $800 million for our transit program, which will be funded partially by substitute funds, partially by FHWA and UMTA funds and partially by City, State and private funds. These projects will in turn generate other Federal money.

13. Open ended funding for H-3 is no longer assured. Highway legislation currently proposed will limit funds for H-3 based on a 1985 cost estimate in the same manner as for the substitute project.

14. The City has made the hard, but proper, decision to prepare for a substitute program. To relieve congestion on Pali and Likelike Highways and on H-1 from the University of Hawaii to Pearl City and ultimately to central Oahu, we need to improve our various city-wide highway bottlenecks. We must build grade separation facilities at key intersections on Likelike and Pali Highways. We need to improve H-1 on- and off-ramps at McCully Street, University Avenue, Vineyard at Punchbowl, Middle Street, Kamehameha Highway and H-2, to name a few. And finally, we must supplement our highways with a grade separated rail transit system. This is where we must put our effort.

In conclusion, we need a renewed effort to look at our comprehensive transportation needs and to eliminate the iron curtain between the State and City transportation planning activities. This is a local matter. The City has the responsibility for all land use, development and infrastructure decisions, yet the State has the authority and the money for designing and building major highway improvements, whether or not the City considers them priorities. The time has come for us to get together in a unified effort to solve our growing transportation needs.

Highway Users Federation
FOR SAFETY AND MOBILITY

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Phillips Petroleum Co

Statement of

Lester P. Lamm

President

Highway Users Federation

before the

Subcommittee on Transportation

Committee on Environment and Public Works

U. S. Senate

May 20, 1986

1776 Massachusetts Avenue, N.W. • Washington, D.C. 20036 • (202) 857-1200

Good morning, Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to appear before you to address 1986 highway legislative issues.

In my many previous appearances before this Subcommittee, I testified in a different capacity, though always in support of a strong Federal-aid highway program. This overriding goal is also a basic tenet of the Highway Users Federation, which I have represented since March 3 of this year.

The Highway Users Federation is a national coalition of businesses, industries, and associations working to make America's highway transportation system safer and more efficient. The Federation is the largest, most diversified organization of its kind in the nation. Our membership, composed of over 400 companies and industry associations, 63 state and local conferences, and 2,000 individual business men and women, represent the chief users of highways and the main providers of highway transportation products and services.

Even more significant to your Committee's interests, however, the Federation is made up of every segment of America's private sector that pays revenue into the Highway Trust Fund, including auto, truck and trailer manufacturers, rubber manufacturers, major national trucking associations, shippers and producers of agricultural and industrial commodities, motor clubs with membership exceeding 40 million, and the petroleum companies who collect and deliver our 9 cents per gallon taxes to the Internal Revenue Service.

The single common denominator of this diverse group is that the economic well-being of each organization is to a large degree dependent on the continued existence of a safe and efficient network of highways, streets and bridges to serve as the backbone of the nation's interstate commerce. Thus, our membership is vitally interested in your present deliberations as we fast approach October 1, 1986, a critical turning point for the Federal-aid highway programs and the Highway Trust Fund (HTF).

Mr. Chairman, your Subcommittee has evaluated the 1986 reauthorization in a most thorough manner, having held hearings, in Washington and across the country, over the past 12 months, at which you heard from numerous private and public sector witnesses. Earlier this month you introduced S. 2405, the Federal-aid Highway Act of 1986, and today's hearing will enable you to hear initial reaction to this bill. The Highway Users Federation welcomes the opportunity to participate in this process.

Before discussing the provisions of S. 2405, though, I would like to mention an activity which I hope will help to focus the attention of every member of Congress on the need to reach agreement on highway legislation before October 1. As you have frequently stated, Mr. Chairman, the Congressional agenda is always crowded, and Senators appreciate hearing from constituents that some particular issue warrants priority attention.

We are certainly at the point where the Federal-aid highway program deserves highest priority. As you well know, we have no new funding available beyond FY 1986. We are nearing a crisis point.

With this in mind, a large group of highway interests has been working together to see if there is agreement within the industry on major current legislative issues. A March questionnaire found a surprising degree of consensus on 20 significant issues. Attachment #1 is a tabulation of these findings. It is clear that a 1986 Highway Act developed against these criteria would be heavily supported by the highway community.

Twenty points, though, is a lengthy message for individuals to bring to their elected representatives. Thus, we boiled the longer list down to the four or five most essential issues which we feel the 1986 legislation must address. This list is presented in Attachment #2. The group of highway interests which has agreed to support the list of essentials is contained in Attachment #3.* You will note that the list numbered 165 as of last week, with more joining each week. This might well be the most extensive coalition ever to support a highway bill, or, at least, since 1956.

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*Retained in committee files.

Let me take a few minutes to discuss the most essential 1986 issues. First among these is the obvious need for prompt action. Only 64 Congressional workdays remain before October 1, and your Committee and the House Public Works and Transportation Committee still appear to be taking significantly different legislative approaches, which would indicate that a lengthy Conference Committee process may be required. Also, the full legislative agenda will require action by the Senate Appropriations, Budget, Commerce, Finance and Governmental Affairs Committees. We could very easily run out of time.

The second major issue is program level. Quite simply put, the highway community wants a program that gives us full value for the taxes we are paying. The 1982 STAA increased tax rates to a level which was sufficient to finance a $15 billion program in FY 1986. As you know this was later reduced by about $2 billion for budgetary purposes. This loss amounts to nearly 20 percent of the fiscal reductions for the entire Federal budget imposed under the Gramm-Rudman-Hollings legislation for FY 1986. When you consider that the Federal-aid program represents slightly more than one percent of all Federal outlays, a 20 percent reduction was clearly excessive in 1986, and would be even more inequitable if continued for future years.

Yet, this is just what we see happening with proposed approaches calling for $12.75 billion and $12.35 billion annual programs for the 1987-1990 period. Either figure would return us to a level lower than the FY 1983 program. Let me repeat -- we would be spending less for highways in 1990 than we did in 1983, even though highway travel is now increasing at more than 6 percent annually, and may be 40 percent higher in 1990 than it was in 1983. And, even though the buying power of $12.3 billion in 1990 may be 30 percent less than in 1983. Mr. Chairman, we would be falling still further behind in our race to provide adequate highway service for our expanding economy. During 1987-1990 we would lose all the ground we made up during the STAA expansion years of 1983-1985. For the economic well-being of the country, we cannot allow this to happen.

We feel that the highway program for 1987-1990 should be at the level first proposed for FY 1986, roughly a $15 billion program level, with annual authorizations at about $14.5 billion. It appears that the Trust Fund revenues, including the current $10 billion balance, can safely support this size program without triggering Byrd amendment reductions. Even this level would be a freeze, not a program increase.

Mr. Chairman, we followed with interest your May 1 discussion with Senator Domenici, in which you both expressed a desire to fully utilize today's highway user taxes and even to see the Trust Fund balance decline over the next few years. We have outlined a proposal which would permit this to occur. The entire highway industry will applaud, and will support completely, your efforts to gain Senate approval at this level. I have enclosed a table which shows a comparison of state apportionments under the three funding levels as Attachment #4.

The third issue on which the highway community is united concerns how a $15 billion program should be distributed. You have had proposals, both in 1986 and earlier, for various changes of programs, consolidations, combined block grants and suggestions for new programs or projects. You also have had proposals for changes in apportionment formulas for existing programs.

I'm sure you also have noted that each such proposal raises objections or concerns. Can Interstate gaps still be closed by 1990? Will older segments of the Interstate be protected? Will local levels of government be treated fairly by the states? Would these proposals lead to further diversion of highway user revenues to transit activities? Can anyone find a new apportionment method that treats all states equitably, particularly when program levels are flat?

Each of these concerns raises far-reaching questions as to the proper Federal, State and local role in overall transportation program administration. In view of the short time available for legislative debate in 1986, and, recognizing the major changes likely upon completion of the Interstate in the early 1990's, all proposed program changes should be deferred.

The best action for the 1987-1990 period would be to keep the same highway and bridge programs that now exist, funded at their originally proposed 1986 levels through the next four years. We feel that the 1986 Act should recognize the need to look beyond Interstate completion, and begin a long-term review of the situation.

The remaining essential 1986 issues must be acted upon by other Senate committees, though you, Mr. Chairman, and other Subcommittee members are represented on these as well.

We will ask the Senate Finance Committee to extend the Highway Trust Fund for four years, through FY 1992. The only proposed change in revenue would be to shift the present six cents per gallon gasohol exemption to general fund financing. The present subsidy reduces Trust Fund income by nearly $1/2 billion per year. This revenue is needed to fully finance a $15 billion program.

Finally, we hope that the Budget and Governmental Affairs Committees will take up the issue of removing the

HTF from the Unified Budget, and exempt Trust Fund programs from the provisions of Gramm-Rudman-Hollings. We would propose simple language identical to that passed by the Congress in 1985 for the Social Security Trust Fund.

The HTF was designed to be a stand-alone, pay-as-you-go fund related to highway needs and to be sustained by user fees assessed according to use of (and thus benefits of) the road system. Since it was established in 1956, the HTF has in no way contributed to the national debt or the imbalance of the Federal budget. To use these funds for other than intended-purposes is to break the "trust" under which they are held and endanger "user fees" as an equitable tax process. You, yourself, expressed it well a few days ago, Mr. Chairman, "Spending constraints...are no longer defensible...."

As you can tell from the attention we have given it, our main concern with the provisions of S. 2405 is its funding level, and, to a lesser extent, the consolidated Interstate-primary program, which itself probably resulted from the reduced funds. Beyond these points, there is much we can support in S. 2405.

In particular, we are pleased that to this point, you have resisted funding specific special purpose projects by name. In our recent questionnaire over 90 percent of the respondents opposed increased Congressional use of specific funding for special-purpose projects of local interest.

True demonstration projects, where valid administrative or technological advances are involved, should be encouraged. It appears that most of the projects identified by Congress for special financing on the past few years are fairly routine highway improvements, eligible for one or more of the regular Federal-aid Highway Programs. They may well represent a class of unfunded nationwide transportation needs, which should be evaluated for potential post-Interstate financing, perhaps in an expanded Primary program. We would hope that the Congress would authorize this type of study in 1986, with annual reports due through 1990.

This review should also evaluate the phenomenon of toll financing. Are we really in a new era of desired toll facility expansion, or is this too a reflection that regular Federal-aid and State highway funds are not adequate to build needed new facilities? The post-Interstate time frame would seem to be the proper point at which any truly far-reaching changes in the Federal or State role should be considered.

The 1/2 percent minimum and the 85 percent minimum apportionment provisions are both quite important to this committee, Mr. Chairman. Under a $15 billion program level both features can be financed, and a majority of respondents to the survey would recommend a continuation of both. The Strategic Highway Research Program was also heavily supported. Finally, we really appreciate your efforts to avoid having the Interstate Cost Estimate serve as a hostage to other less vital actions in years to come.

Mr. Chairman, this completes my testimony. Your early introduction of a draft bill is commendable, especially with the reservations you have expressed on the Senate floor over the funding level. It is our desire to help in any way we can during the remainder of the 1986 legislative process. Our goal, as yours, is to have a good bill, with adequate financing in place before October 1. For the good of the highway program, we must reach this goal!

Attachment #1
4/18/86

1986
Highway
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CRITERIA FOR 1986 FEDERAL-AID HIGHWAY ACT

The following 20 points represent the consensus of responses to a questionnaire on elements of Federal highway legislation from over 100 representatives of highway user and highway related organizations. Recommendations based on these responses were reviewed and supported in principle by most representatives of major highway support groups at subsequent meetings.

1. TIMING OF LEGISLATION - Absolutely critical to have a bill signed before October 1, 1986. (Less than 90 Congressional workdays left.) Should, for state program planning, know program levels, apportionment by July 1, 1986. (37 Congressional workdays left.)

   RECOMMENDATION: CONGRESS TRY FOR CONSENSUS BILL, AS OUTLINED BELOW. HIGHWAY SUPPORT GROUPS INTENSIFY GRASS-ROOTS CONTACTS TO ALERT ALL MEMBERS OF CONGRESS TO POTENTIAL CRISIS.

2. DURATION OF BILL - Great support for at least four years, to avoid annual pressure-filled legislative cycle.

   RECOMMENDATION: A FOUR YEAR HIGHWAY BILL IS NEEDED.

3. GRAMM-RUDMAN-HOLLINGS - Some individual corporate support for continued inclusion of highway programs under G-R-H. About 85% of respondents favor exemption, as with Social Security Trust Fund. This is the only way the Trust Fund balance will be drawn down over the next few years.

   RECOMMENDATION: CONGRESS TRY AGAIN FOR G-R-H EXEMPTION. HIGHWAY SUPPORT GROUPS WORK TO GAIN APPROVAL THROUGH PUBLIC WORKS, FINANCE, APPROPRIATIONS, BUDGET AND GOVERNMENT OPERATIONS CHANNELS.

4. UNIFIED BUDGET - Nearly unanimous support for removing the Highway Trust Fund from the Unified Federal Budget; as was done last year for the Social Security Trust Fund.

   RECOMMENDATION: SEEK REMOVAL OF HTF FROM UNIFIED BUDGET. HIGHWAY COMMUNITY BRING ISSUE TO ATTENTION OF ALL MEMBERS.

5. GASOHOL, BUS EXEMPTIONS - A heavy majority supported eliminating the gasohol exemption. Fewer than half of respondents favored eliminating the revenue-producing bus exemption.

   RECOMMENDATION: SEEK REPEAL OF GASOHOL EXEMPTION.

6. SIZE OF HIGHWAY PROGRAMS - Over 95% favored gradual reduction of the Trust Fund balance below present $9.4 billion. There was a consistent recognition that this can only happen if the programs are exempt from G-R-H. The proposed levels of $12.7 per year in HR 4144 are seen as woefully inadequate, and unfair to users, who are still paying Trust Fund fees at the '82 STAA level. The Congressional Budget Office has indicated that a program level of over $14 billion can be supported, though the Byrd Amendment would be triggered in 1988. Our review would suggest that a straight-line highway program of about $15 billion could be attained. The 1986 authorized level was about $14.6 billion.

   RECOMMENDATION: SEEK AUTHORIZATION LEVEL FOR FY 1987-1990 AS HIGH AS TRUST FUND REVENUES CAN SUPPORT, ABOUT $15 BILLION/YEAR. THIS WILL PERMIT THE ORDERLY REDUCTION OF THE TRUST FUND BLANCE TO $3-5 BILLION BY 1991, AND SHOULD NOT ACTIVATE THE BYRD AMENDMENT.

7. DELAY OF INTERSTATE COMPLETION, SUBSTITUTES - HR 4144 would reduce the level of funding for Interstate completion and substitute programs, and delay them to about 1998. Most respondents reaffirmed support of completing the Interstate System by 1990. There was also support for timely completion of substitute projects.

RECOMMENDATION: CONTINUE TO FUND INTERSTATE AND INTERSTATE SUBSTITUTE PROGRAMS FOR 1990 COMPLETION, USING CURRENT INTERSTATE COST ESTIMATE.

8. COMBINE HIGHWAY, TRANSIT INTERSTATE SUBSTITUTE PROGRAMS - There was nearly unanimous opposition to this proposal, as an additional diversion of user funds to transit.

   RECOMMENDATION: CONTINUE SEPARATE AUTHORIZATIONS FOR HIGHWAY, TRANSIT INTERSTATE SUBSTITUTE PROGRAMS. CONTINUE GENERAL FUND SOURCE FOR TRANSIT SUBSTITUTE PROGRAM.

9. COMBINED INTERSTATE COMPLETION, 4R, PRIMARY PROGRAM This proposal would provide greater flexibility for states, which was supported by some respondents; however, overall consensus supported the continued priority on Interstate completion and 4R which would be best assured by separate programs.

   RECOMMENDATION: CONTINUE SEPARATE PROGRAMS.

10. INTERSTATE DISCRETIONARY, 1/2% MINIMUM - Opinion was mixed, 30% having no strong feelings. Of those who indicated preference, about 1/3 favored eliminating both. The discretionary program was more popular than the 1/2%. Either or both could be financed at the higher level in #6 above.

    RECOMMENDATION: CONTINUE BOTH.

11. FEDERAL TOLL POLICY - More than half of the respondents favored retaining the current toll policy, though a sizable minority would consider changing. Of these, more supported tolls on new construction only. As in 1982, this issue could be controversial, for opinions on both sides were forcefully expressed. With so little time available for reaching agreement on a 1986 Act, Congress should probably put off controversial issues.

    RECOMMENDATION: NO CHANGE TO PRESENT TOLL POLICY. CONGRESS SHOULD CALL FOR A STUDY OF THE TOLL QUESTION, WITH PRIVATE SECTOR COOPERATION, AND TRB INVOLVEMENT.

12. LOCAL-INTEREST PROJECTS - Over 90% of the

respondents opposed increased Congressional use of specific funding for special-purpose projects of local interest. True demonstration projects, where valid administrative or technological advances are involved, should be encouraged. It appears that most of the projects identified by Congress for special financing in 1985 are fairly routine highway improvements, eligible for one or more of the regular federal-aid highway programs. They may well represent a class of unfunded nationwide transportation needs, which should be evaluated for potential post-Interstate financing, perhaps in an expanded Primary program.

RECOMMENDATION: OPPOSE SPECIAL FINANCING OF ROUTINE PROJECTS. CONGRESS SHOULD CALL FOR A DOT-TRB STUDY OF CURRENT AND ESTIMATED FUTURE UNFUNDED HIGHWAY NEEDS, WITH RECOMMENDATIONS FOR FINANCING IN THE POST-1990 PERIOD. THIS SHOULD BE A MAJOR EFFORT WITH WIDE PUBLIC AND PRIVATE COOPERATION.

13. 85 PERCENT MINIMUM APPORTIONMENT - Two-thirds of those responding opposed curtailing this relief to donor states.

RECOMMENDATION: MAKE PERMANENT THE MINIMUM APPORTIONMENT PRINCIPLE. APPLY IT TO ALL PROGRAM ACCOUNTS, AND DO NOT ESTABLISH ARTIFICIAL LIMITS. CALCULATE THE MINIMUM BY COMPARING ACTUAL REVENUES WITH ACTUAL APPORTIONMENTS AND ALLOCATIONS.

14. HIGHWAY AND TRANSIT BLOCK GRANT - Fewer than 10% of respondents favored this provision. Combining highway and transit programs, with the possibility of further diversion of user funds, generated the most opposition. We have heard that transit interests share the same concerns. Many highway users are sympathetic to the desire for more flexible highway funds, but only if safeguards are provided for current urban-and county-level program recipients. Highway users fully support the need for further reductions of procedural requirements which make today's highway programs so complex.

RECOMMENDATION: CONTINUE SEPARATE PROGRAMS BUT PERMIT GREATER FLEXIBILITY IN TRANSFERRING FUNDS BETWEEN HIGHWAY PROGRAMS WITH CONCURRENCE OF LOCAL OFFICIALS.

15. BRIDGE PROGRAM - There was full support for keeping enough Federal funding to offset deteriorating

bridges.

RECOMMENDATION: CONTINUE THE BRIDGE PROGRAM, AS PRESENTLY FUNDED. INCREASE DISCRETIONARY FUNDS TO $300 MILLION ANNUALLY.

16. SAFETY PROGRAMS - Responses supported full funding of the Section 402 and Section 403 safety programs and the hazard elimination and rail-highway crossing programs. The majority favored a more flexible combined safety construction program.

    RECOMMENDATION: CONTINUE SECTION 402 AND SECTION 403 PROGRAMS AT CURRENT FUNDING LEVELS AND COMBINE HAZARD ELIMINATION, RAIL-HIGHWAY CROSSING PROGRAMS INTO A CONSOLIDATED SAFETY CONSTRUCTION PROGRAM.

17. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM - About 90% of those expressing opinion favored continuing this program, at full $50 million funding. There was very little support for combining it with Interstate and Primary programs. It was pointed out that the MCSAP program is normally administered by other state agencies than those who operate the highway programs.

    RECOMMENDATION: CONTINUE THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM AS A SEPARATELY FUNDED PROGRAM, AT $50 MILLION PER YEAR. THE PROGRAM SHOULD BE PROVIDED WITH CONTRACT AUTHORITY.

18. STRATEGIC HIGHWAY RESEARCH PROGRAM - Over 90% support.

    RECOMMENDATION: AUTHORIZE THE FULL FIVE-YEAR PROGRAM.

19. DISADVANTAGED BUSINESS ENTERPRISES - The vast majority of respondents opposed continuation of the provisions contained in Section 105(f) of the STAA of 1982. While nearly everyone agrees with the desire to enhance minority participation in the highway program, it is widely felt that the 1982 approach has led to rigid quotas and to inadvertent or, in some cases, even fraudulent abuses of the program, which were obviously not intended by Congress. Clearly, a different approach is called for.

    RECOMMENDATION: RETURN TO THE PRE-1982 DOT

PREFERENCE PROGRAM FOR DBE's and WBE's. STATE GOALS COULD REMAIN IF DESIRED. EMPHASIZE NEED TO CONSIDER GOOD FAITH EFFORTS BY BIDDERS. CONTINUE VIGILANCE OF FRAUDS, FALSE FRONTS, BROKERS AND OTHER ABUSES. REQUIRE PERIODIC REPORTS OF PROGRESS BY DOT.

20. PROPER FEDERAL, STATE, LOCAL ROLE - The questionnaire tested support for a more dominant role for either the Federal or the state and local participants in the Federal-aid highway program. There was almost no support for changes in either direction. It appears clear that the current program administration roles assigned by the Congress to the various public agencies permits good cooperation, while still ensuring sufficient checks and balances.

RECOMMENDATION: KEEP TRADITIONAL FEDERAL, STATE AND LOCAL PROGRAM MANAGEMENT ROLES.

Attachment #2
5/7/86

**1986
Highway
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MOST ESSENTIAL ISSUES -- 1986 HIGHWAY ACT

1. PROMPT ACTION

Prompt Congressional action is essential to authorize Federal-aid highway and safety programs beyond 1986, to extend the Highway Trust Fund and appropriate user fees and to establish obligational authority for FY 1987. State programs will be hurt if action is delayed beyond July 1st; the Federal-aid program will come to a near halt if all of the above are not in effect by October 1, 1986 -- less than 80 legislative days away.

2. $15 BILLION/YEAR FOR FOUR YEARS

The Federal-aid program should be authorized for four years to permit effective planning and administration. Authorizations and obligational authorities should be at $15 billion/year, which would fully utilize current Highway Trust Fund income and interest and put user fees already paid into the Trust Fund to their intended use. The Trust Fund will continue to remain solvent, as it legally must, at this spending level. It should be recognized that a $15 billion annual program is itself a compromise with current budgetary constraints, since total needs on the federal-aid highway system are much greater.

3. CONTINUE EXISTING PRIORITIES

Existing Federal-aid highway and safety programs should be continued for four years with separate authorizations, preserving the present Federal-state-local relationship. Federal priority should continue to be placed on Interstate completion by 1990 and on fully funding Interstate rehabilitation and Interstate Substitute Highway needs. Transit and highway programs should not be combined.

4. ELIMINATE GASOHOL EXEMPTION

The exemption of Gasohol from 6¢ of the Federal Fuel Tax reduces Trust Fund income by about $1/2 billion per year. This exemption should be removed so that all highway users bear their fair share of costs. Alternate fuel sources may well be vital to the future well-being of the U.S. economy. For this reason a developmental subsidy to the gasohol industry through 1991 should continue, but should be financed by general revenues.

The Federal-aid highway and safety programs are fully supported by user fees and we believe efforts should be continued to exempt them from Gramm-Rudman-Hollings sequestrations. The Highway Trust Fund should also be removed from the Unified Federal Budget in recognition of its self-funding and internal solvency controls.

Attachment #4
5/15/86

1986
Highway
Legislative
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Estimated FY 1987 Apportionments as Part of a $15 Billion Program, Compared with Apportionments under the 2/86 Administration Proposal and the 5/86 Draft Senate Bill, Including 85% Minimum

(Dollars in Thousands)

State	Coalition Proposal	Administration	Senate
Alabama	260,787	223,466	226,391
Alaska	171,919	161,853	153,938
Arizona	187,639	161,993	137,218
Arkansas	141,633	120,126	125,917
California	1,141,482	954,053	1,028,673
Colorado	219,035	181,001	186,659
Connecticut	302,033	198,765	243,195
Delaware	59,077	42,301	50,455
Dist. of Col.	77,668	67,206	67,595
Florida	574,546	454,742	508,838
Georgia	370,587	328,773	322,646
Hawaii	131,750	105,087	137,569
Idaho	98,473	86,672	87,218
Illinois	478,215	426,116	366,129
Indiana	291,044	241,821	252,357
Iowa	203,969	168,714	163,701
Kansas	176,376	161,759	146,815
Kentucky	236,559	199,965	206,788
Louisiana	363,572	276,991	316,330
Maine	67,402	53,310	57,621
Maryland	315,865	250,473	262,056
Massachusetts	328,428	266,743	307,150
Michigan	355,903	319,296	303,417
Minnesota	271,411	225,477	230,850
Mississippi	146,569	135,832	128,289
Missouri	284,815	267,489	243,454
Montana	125,570	113,449	108,740
Nebraska	126,403	104,122	105,012
Nevada	84,022	69,395	72,864
New Hampshire	66,849	49,415	55,863
New Jersey	404,418	333,932	332,237
New Mexico	121,946	106,400	106,130
New York	876,613	660,969	613,513
North Carolina	327,429	269,877	301,965
North Dakota	88,902	71,180	76,296
Ohio	500,735	423,978	445,094
Oklahoma	218,321	184,790	170,232
Oregon	161,521	146,570	136,622
Pennsylvania	586,889	527,533	498,536
Rhode Island	124,220	71,311	95,400
South Carolina	178,510	155,235	154,634
South Dakota	96,361	78,915	82,761
Tennessee	280,058	259,653	250,770
Texas	966,956	791,559	886,170
Utah	156,375	126,400	138,734
Vermont	64,102	46,772	54,021
Virginia	358,460	290,779	277,380
Washington	344,673	278,862	299,293
West Virginia	120,893	108,624	99,212
Wisconsin	226,077	189,581	208,300
Wyoming	96,536	80,470	83,742
Puerto Rico	68,778	72,404	61,666
Total Apportionments	14,028,374	11,692,199	11,976,456
Total National Program	15,100,000	12,750,000	12,350,000

Highway
Users Federation
FOR SAFETY AND MOBILITY

OFFICE OF THE PRESIDENT

June 9, 1986

The Honorable Lloyd Bentsen
United States Senate
Washington DC 20510

Dear Senator Bentsen:

Thank you for your letter concerning my May 20 testimony before your Subcommittee on Transportation. The additional information you requested is enclosed.

Please let me know if HUF or I can be of further assistance. With only 55 Congressional workdays left before September 20, we are most concerned about prospects for a good highway reauthorization bill. We want to do whatever we can to help you and the Committee meet this target.

Sincerely,

Lester P. Lamm

Enclosure

1776 Massachusetts Avenue N.W. Washington D.C. 20036-1993 (202) 857-1200

Highway
Users Federation
FOR SAFETY AND MOBILITY

OFFICE OF THE PRESIDENT

HIGHWAY HEARING QUESTIONS
MAY 20, 1986

QUESTIONS

1. In your testimony you recommend a study of tolling as an alternate means of financing. Can you be at all specific as to how the members of your organization feel about tolling? What restrictions, if any, would you like to see on the use of funds collected by tolling? Do you favor mandatory termination of tolls once construction costs have been paid?

ANSWER

The membership of the Highway Users Federation has been consistently opposed to the imposition of highway tolls.

As the principal reason, consider the economics to the highway user: The Federal Motor Fuel Excise Tax is now 9 cents per gallon, and the average State rate is 12½ cents per gallon. By comparison, a highway toll of 4 cents per vehicle mile (which is lower than most existing toll rates) on a passenger car which averages 25 miles per gallon would equate to $1.00 per gallon "road tax."

Clearly, this should be required only as a last resort in cases where the normal Federal-State capital improvement program is inadequate. If tolls are imposed, revenues should be devoted to the toll-facility only, and discontinued when original costs are liquidated.

The full HUF toll policy is as follows:

"Whenver possible, financing of needed highway improvements should be from highway user taxes and receipts, exclusive of tolls. When toll financing is used, the collection of the tolls should end as soon as sufficient tolls have been collected to liquidate the original cost of the facility and any upgrading needed to maintain desired service levels. Tolls should not be imposed on new or existing facilities built with user funds, nor should tolls be used to support facilities and services other than for the construction and maintenance of the particular facility on which the toll is charged. Tolls should not be used to fund mass transit projects or as a source of general revenue."

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

THOMAS D. LARSON, President
Secretary
Pennsylvania Department
of Transportation

FRANCIS B. FRANCOIS
Executive Director

STATEMENT BEFORE THE

TRANSPORTATION SUBCOMMITTEE OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Relating to

S.2405
THE FEDERAL-AID HIGHWAY ACT OF 1986

by

THOMAS D. LARSON, P.E.

PRESIDENT, AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION OFFICIALS

AND

SECRETARY OF TRANSPORTATION, COMMONWEALTH OF PENNSYLVANIA

May 20, 1986

Founded in 1914, AASHTO represents the departments concerned with highways and transportation in the States, the District of Columbia, and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member highway and transportation agencies.

EXECUTIVE OFFICE: 444 N. Capitol Street, N.W., Suite 225 Washington D.C. 20001 Telephone (202) 624-5800

Mr. Chairman and distinguished members of the Transportation Subcommittee, I am Thomas D. Larson, President of the American Association of State Highway and Transportation Officials (AASHTO) and Secretary of Transportation for the Commonwealth of Pennsylvania. On behalf of AASHTO, I am pleased to respond to your invitation to provide the Association's views on reauthorization of the federal-aid highway program and on the recently introduced reauthorization bill, S.2405.

Clearly, extension of the federal-aid highway authorizations provided by the Surface Transportation Assistance Act of 1982 is of critical importance, not only to those of us in the transportation community, but to all citizens of the United States. The focal role which the nation's highway network plays in America's economic vitality, in the national defense, and in the quality of each of our lives cannot be overstated. I applaud your initiative in developing a comprehensive, multi-year reauthorization bill (S.2405) which maintains strong emphasis on established national highway priorities, such as completion of the Interstate System. You have been leaders in shaping the nation's transportation programs and policies, and it is evident that you are prepared to continue this effective leadership.

My colleagues and I in AASHTO have been preparing for the reauthorization process for many months now, and we have attempted to formulate policy statements to clearly state our positions on the major issues. Most recently, the Association adopted, by more than the required two-thirds majority vote of all the member departments, a policy resolution entitled "Congressional Action in 1986 Affecting Transportation." This resolution focuses on principles and recommendations for federal highway and public transportation programs and, along with other previously adopted policies, will form the basis of my testimony today. A copy of the complete resolution (PR1-86) is attached.

I will first review several general principles which AASHTO has identified for the federal-aid highway program, and then turn to specific program elements.

General Principles

Provision of highway facilities and services in the United States has traditionally been a government responsibility. The federal-state partnership in highway finance that has evolved over a period of some 70 years has produced the finest highway transportation system in the world, an accomplishment which we can all be proud of. However, this partnership must be continually nurtured and adapted to changing conditions if it is to remain effective.

Central to the present federal-aid highway program structure is its financial base, the Highway Trust Fund, which has enabled our modern highway system to be developed on a pay-as-you-go basis, financed primarily from user fees. In these times of scarce resources at all levels of government, it is essential that highway user fee revenues remain dedicated to highway uses and not be diverted. In addition, states should be afforded flexibility in the use of federal funds so the maximum benefit from their use can be realized.

With increasing volumes of traffic on the nation's highways and growing reliance on larger and heavier trucks in the flow of interstate commerce, highway and bridge deterioration has accelerated, traffic congestion has increased, and highway improvement requirements have mounted. Growth centers in suburban and exurban areas are the focal points for new congestion and unusual system demands. Meanwhile, the mushrooming growth of truck traffic, of total dependence on trucks by much of the nation's commerce, underscores the sensitivity of the use-user fee relationships for this traffic. The country now is faced with an imbalance between required highway improvements and the resources available to fund them. Innovative financing strategies must be identified and implemented to narrow this gap if we are to maintain even minimum acceptable service levels, much less serve future requirements.

Stable and predictable funding levels are key to the states' ability to develop and manage their highway programs. During 1986, the federal-aid program has had many mid-course adjustments in apportionments and obligation ceilings. The disruptive effects of these adjustments have been significant, and steps must be taken to avoid this situation in the future.

Overall, AASHTO believes that the many beneficial aspects of the federal-aid highway program can only be retained through enactment of multi-year reauthorization legislation. S.2405, which would reauthorize the program for a four-year period 1987-90, is a positive step in this direction, although we are concerned that the proposed authorizations are level over the four years and do not allow for inflation. The bill incorporates numerous features which are consistent with AASHTO policy and would clearly be in the nation's best interest. There are other areas, however, in which we would suggest modifications for your consideration, and still other areas that are not addressed which we would recommend for your consideration during subsequent deliberations on the bill. I will turn now to more specific aspects of reauthorization.

Timing

Authorizations provided by the Surface Transportation Assistance Act of 1982 expire on September 30, 1986. AASHTO strongly encourages Congress and the Administration to enact multi-year reauthorization legislation prior to the expiration date. All of the states have undertaken ambitious highway infrastructure improvement programs which rely, in varying degrees, on federal financial assistance. Interruptions in the flow of federal funds would be extremely disruptive to these programs in many states. By introducing S.2405 at an early date, you have recognized the need for an uninterrupted program and have allowed what would appear to be sufficient time to complete the legislative process before October 1, 1986. AASHTO urges expeditious action on reauthorization, which is the top legislative priority for the highway program in 1986.

Funding Levels

As previously stated, stable and predictable multi-year highway funding should be a major objective of reauthorization legislation. However, careful attention must also be given to the level of funding provided. Analyses by AASHTO of the funding conservatively required to meet the requirements of the existing federal-aid system found that combined federal, state and local government expenditures on the system should be in excess of $27 billion per year, just to maintain 1980 conditions and accommodate modest traffic growth. To sustain an annual $27 billion overall program under the current federal-aid highway program formulas would require a federal contribution in excess of $21 billion, which is more than 50 percent greater than Fiscal Year 1986 funding levels.

While projected Highway Trust Fund revenues will not be sufficient to support a program at the level documented in AASHTO's needs assessment, AASHTO believes that highway user revenues must be fully returned to the states through timely authorizations, apportionments and spending authority equivalent to all revenues accruing to the Highway Trust Fund. Moreover, AASHTO recommends that if Congress and the Administration do not enact authorizations, apportionments and spending authority equivalent to all revenues accruing to the Highway Trust Fund, federal taxes should be proportionately reduced. While we are fully cognizant that funding for highway programs must be dealt with in the context of the national priority to reduce the federal budget deficit, we feel that balancing the federal budget should be achieved without violating the compact with the American people on the collection and use of highway user fees.

The recently-passed "sense of the Senate" resolution calling for increased highway funding levels which would permit spending Trust Fund receipts, including interest, and significant reductions in the Fund's cash balance over the next three years, is firm indication that you recognize the need to maximize highway funding. As presently written, S.2405 would provide annual authorizations of approximately $13.1 billion and an annual obligation ceiling of $12.350 billion, a 6 percent decrease from the Fiscal Year 1986 level of $13.125 billion. AASHTO urges that consideration be given to adjusting these levels upward in accordance with the principles of the Senate Resolution to provide "full funding" for the highway program.

In a related issue, although not within the purview of this Committee, the Highway Trust Fund and highway user taxes and fees must be extended beyond their present 1988 expiration to support reauthorization of the federal-aid highway program. AASHTO recommends that these be extended indefinitely to ensure a reliable funding base for highway programs. At the same time, AASHTO recommends that all fuel tax exemptions for gasohol, methanol and other special fuels be eliminated.

Interstate Completion and Preservation

The twin goals of completing the Interstate System as presently defined (including Interstate Substitute projects) by 1990, and providing for on-going preservation of the nation's Interstate highway system, remain AASHTO's number one priority. Sufficient funding and spending authority to meet these twin goals must be guaranteed in the next reauthorization bill.

AASHTO is pleased to see the S.2405 commitment to completing the System by 1990, but does not see how this objective can be achieved with a $3 billion per year authorization. AASHTO would recommend that current authorization levels for Interstate construction be retained and that all Interstate funds used for completion, whether new or previously apportioned, be exempt from obligation limitations. AASHTO would further recommend that states be granted extensions on an individual case basis for use of final Interstate completion apportionments if they are demonstrating progress toward completion, but are delayed by physical or external factors such as court injunctions.

While AASHTO recommends that the states be permitted to transfer and borrow Interstate 4R funds for Interstate completion projects at their discretion, there is concern that consolidation of the Interstate Construction, Interstate 4R and Primary programs into a single category may be going too far too fast. The remaining segments of the Interstate System are typically environmentally sensitive. Enormous efforts have been made to design these segments to be compatible with their sensitive environmental and social surroundings. In Pennsylvania, for example, we have invested $268 million over the past seven years to resolve controversial designs on six major Interstate highways. In all cases, controversies have been resolved, and by the end of the year, we can have all remaining segments under construction contract. I must admit, however, that resolution of such complex controversies remains fragile at best. Without a crystal clear Congressional commitment to those specific segments presently identified in the Interstate Cost Estimate, I am afraid that the momentum to complete will be lost. The program will die, but the System itself will never be completed. We will have wasted hundred of millions of dollars for preliminary engineering, design, and right-of-way acquisition; in many instances leave highways half finished never to be completed; and worst of all lose the economic benefits that these last remaining segments of the Interstate System promised when Congress first approved their inclusion in the Interstate Cost Estimate.

For those 25 states which have completed or nearly completed their portions of the Interstate, these issues are of little concern. AASHTO agrees with Senator Stafford that as long as Interstate construction funds are made available, a minimum of one-half percent of those funds should be apportioned to those states which have completed or nearly completed their Interstate highways.

AASHTO's recommendation that a System of Highways of National Significance be recognized to include the Interstate System, Primary System and bridges on all current federal-aid systems was not intended in any way to detract from completing the Interstate System as presently defined. Rather, AASHTO envisioned a study to analyze the proposed System of Highways of National Significance, to better rationalize its composition and to determine how federal-aid funds should be apportioned in a fair and equitable manner to all the states. (Details on the proposed System of Highways of National Significance and the recommended study are included in the AASHTO report "A New Focus for America's Highways: Recommendations on the Federal-Aid Highway Program", copies of which have been provided previously to your staff.) To consolidate the categories prior to completing such a study would be premature and would, no doubt, undermine the commitment to complete the Interstate System by 1990.

Probably the single most important ingredient for the states to complete the Interstate System by 1990, other than adequate funding, is a stable and predictable flow of funds. Provisions in S.2405 to apportion funds based on an administratively adjusted Interstate Cost Estimate and extension of the lapse period to four years are key steps in the right direction. For example, with the assurance that sufficient funding has been specifically earmarked for completing these segments remaining and that those funds will be apportioned to Pennsylvania uniformly between now and 1990, we would have the confidence to advance construct our final Interstate projects using federal reimbursement anticipation notes for financing. The same principles would also apply to Interstate Substitute projects.

While present AASHTO policy would retain the Interstate Construction Discretionary Program, I am aware that a number of states have changed their thinking on this position and expect that the issue of Interstate discretionary funding will receive further discussion within AASHTO. These same states recommend adequate authorizations, one final Interstate Cost

Estimate, constant apportionment factors, and that funds remain available until expended (no lapse). Under these conditions, a discretionary program would not be required.

The Interstate System has been the keystone of the federal-aid highway program for many years, and with the System now 97 percent complete, it is imperative that we bring the program to a successful conclusion. Linked with the goal of completing the Interstate System is the goal of System preservation, as noted earlier. Taken together, Interstate completion and preservation are AASHTO's number one priority, and we urge that sufficient funding be guaranteed in reauthorization legislation to meet these twin goals. It would be unconscionable to allow the Interstate System to deteriorate and lose the mobility benefits we currently enjoy from this hundred-billion-dollar-plus public works investment.

Flexibility

AASHTO policy supports increased state flexibility in the use of federal-aid highway funds. For highways of primarily state and local interest, AASHTO encourages the consideration of block grants. S.2405 moves in this direction with the Combined Road Plan Demonstration Program which would test approaches for streamlining the secondary, urban and off-system bridge programs. Block grants and relaxation of federal design guidelines and requirements would go far in providing the expanded flexibility which the AASHTO member states seek. Another key flexibility provision of S.2405 which AASHTO endorses is the option to utilize less than the maximum federal share in financing highway projects. The bill's provision to permit transfers between the urban and secondary categories is also helpful.

Strategic Highway Research Program (SHRP)

AASHTO is, of course, very supportive of the funding provision for SHRP which is included in S.2405. I have been and remain personally involved in the SHRP effort, which holds enormous potential to improve the performance and efficiency of the nation's highways. There is every reason to be confident that the 1/4 percent set-aside funding proposed for SHRP will breathe new life into highway innovation. Will SHRP be worth the $150 million investment which is anticipated? As an example of the payback potential, consider the $10 billion which is spent each year in this country on asphalt for highways. If the results of SHRP can achieve just a one percent improvement in what we get for our asphalt dollar, a new resource of $100 million per year for investment in the highway system will be created. Similar results are possible in other areas through SHRP. I am a firm believer that we must innovate to survive in the highway business, and SHRP is an excellent example where Congressional action can foster innovation.

Disadvantaged Business Enterprise Program (DBE)

The member departments of AASHTO have been and remain committed to increasing the participation of disadvantaged business enterprises in their programs. However, controversy has surrounded implementation of the DBE program since its inception in the Surface Transportation Assistance Act of 1982. To more thoroughly address DBE issues, AASHTO convened a task force on DBE programs in late 1985. The task force was chaired by Florida and included representatives from eight states, two from each AASHTO region. Following an intensive three-month effort, the task force produced a report and proposed a policy statement on DBE programs, both of which were accepted by the AASHTO Policy Committee in February 1986. This material has been transmitted to Committee staff.

The policy statement centers on the premise that the intent of Congress in creating the DBE program was to develop DBE's to the point where they could compete effectively in the highway construction industry environment. Therefore, AASHTO regards the present program, with its 10 percent DBE goal, as a temporary measure to achieve the objective of DBE competitiveness and recommends that the emphasis of the program be directed toward transition strategies which facilitate achievement of the objective.

Specific task force recommendations for the DBE program focused on substantially increasing training and development efforts and increasing the supply of available DBE's qualified to perform highway work. In the area of training and development, the task force recommended a broader scope of eligible activities and increased funding above the level currently provided through the supportive services program. The broader scope would include eligibility for such items as bond and loan guarantees. Increased funding could be realized by giving states the option to use some small portion of their federal-aid highway apportionments for DBE training and development. On the issue of increasing the pool of available DBE's, the task force recommended the establishment of minimum uniform national standards for DBE certification which do not pre-empt states' options for imposing stricter standards. Reciprocal certification arrangements among states were also recommended.

AASHTO recognizes that the DBE program will continue to be a significant issue in the federal-aid highway program in the foreseeable future. To build on the work of the task force, AASHTO has formed a Special Committee on DBE Programs to gather, evaluate and report useful information to member departments. The Committee is charged with preparing and maintaining a DBE "practices manual" which will address, as a minimum, the following areas: certification, acceptable good faith efforts, contract compliance and enforcement, and training and financial assistance. Through this effort, AASHTO hopes to facilitate the attainment of competitive status for DBE's to the point where the present program with mandated goals is no longer necessary to ensure a fair and reasonable DBE share of highway activity.

S.2405 extends the present 10 percent DBE goal indefinitely, makes technical assistance activities eligible in meeting up to 10 percent of the DBE goal, directs the U.S. DOT to establish minimum uniform certification criteria, requires that DBE subcontractors perform at least 30 percent of subcontract work themselves, and establishes target levels for prime contracts with DBE's beginning in 1988. While some of these provisions may be beneficial refinements to the DBE program, AASHTO suggests that the eligibility criteria for technical assistance need additional emphasis and clarification and that some acknowledgment of the transition nature of the program is desirable to place it in a temporary perspective. We are willing to work with the Committee on these specific points of concern, in the interest of making the program more responsive to its overall objectives.

Sanctions

AASHTO believes that incentives should be developed where needed to encourage states to comply with federal policies and that sanctions involving the withholding of federal-aid highway funds, such as those currently in place for the 55 MPH speed limit and the minimum drinking age, should be eliminated. Similarly, for the Highway Beautification Program, AASHTO supports, in principle, conversion to a voluntary state program, rather than the present penalty program. S.2405 is silent with respect to sanctions. AASHTO encourages that emphasis be given to incentives rather than sanctions in the federal-aid highway program.

Toll Financing

Earlier in this statement, I mentioned the widening gap between highway requirements and available resources. The clear message is that we need to be innovative in finding ways to increase resources for highway improvements. Numerous possibilities could be cited. In Pennsylvania, for example, we have an aggressive transportation partnership program underway to promote private participation in the financing of transportation facilities. Toll financing is another option which is receiving increased attention. AASHTO presently has two policy statements on toll financing:

(1) state transportation agencies should be permitted to develop new toll highways in conjunction with use of federal funds on federally-aided projects, as they are now permitted to do with regard to toll bridges and toll tunnels, and

(2) the Secretary of Transportation should be granted the authority to allow the imposition of tolls on federal-aid highways where uniquely high maintenance, construction or reconstruction costs exist. There should be no obligation to repay federal-aid highway funds which may have been expended on the facility.

S.2405 does not relax current federal restrictions on toll financing. As this Committee continues its deliberations on reauthorization legislation, AASHTO urges that consideration be given to broadening the authority to implement toll financing so that states will have this option available to address priority highway requirements.

This concludes my testimony, Mr. Chairman. Reauthorization of the federal-aid highway program is obviously a major legislative objective for 1986, and I assure you that the member departments of AASHTO are committed to working with you in shaping a highway program which serves the nation's best interests. I appreciate the opportunity to share AASHTO's views and would be pleased to respond to any questions you may have.

Congressional Action in 1986 Affecting Transportation

(March 31, 1986)

PR1-86 WHEREAS, the 99th Congress will be considering several matters during 1986 that can impact on the nation's transportation programs; and

WHEREAS, the member departments of the American Association of State Highway and Transportation Officials, representing the transportation agencies of the fifty states, Puerto Rico and the District of Columbia, have a deep interest in and concern about the transportation-related issues before the 99th Congress, and want to advance their observations and recommendations with respect to the issues under consideration:

NOW THEREFORE, the Policy Committee of the American Association of State Highway and Transportation Officials (AASHTO), by the affirmative vote of more than two-thirds of its 52 member departments, does hereby adopt the following statement as official policy of the Association:

Introduction

The member departments of AASHTO are involved in all modes of transportation, and recognize that each has a significant role in meeting the overall transportation needs of America. Of primary concern to the member departments in 1986, however, are the highway and public transportation programs, since the Surface Transportation Assistance Act of 1982 is set to expire on September 30, 1986.

Overview of the Federal-aid Highway and Transit Programs

The 70 year old federal-state partnership in highway finance has produced the finest highway transportation system in the world, financed on a pay-as-you-go basis with revenues collected primarily from users. The 850,000 miles of the federal-aid highway system are a most significant portion of our 3.9 million miles of highways, roads and streets, and carry some 90 percent of the nation's traffic. The economy of our nation, the mobility of our citizens, the ability of our commerce and industry to move goods and commodities, and our capability to progress as a nation are all dependent upon the extent to which we preserve, rehabilitate and enhance the capacity of those 850,000 miles, and complete long-promised Interstate construction activity.

Analysis by AASHTO of the funding required to adequately meet the requirements of the existing federal-aid system conservatively found that combined federal, state and local government expenditures on the system should be in excess of $27 billion per year, just to maintain 1980 conditions and accommodate modest traffic growth. Others have estimated these requirements at a few billion dollars less, or more. To sustain an annual $27 billion overall program under the current federal-aid highway program formulas would require a federal contribution in excess of $21 billion, which is more than 50% in excess of Fiscal Year 1986 funding levels.

AASHTO's member departments recognize that public transportation is vital to meeting mobility needs in many places across the nation. Collectively the states are now contributing over $3.5 billion annually to meeting transit needs. A continued federal program to assist public transportation is essential to meet both capital and operational funding needs and sustain present levels of service. The federal, state and local partnership should be continued with funding continued at least at current levels.

The responsibility for the provision of transportation has been placed upon the states. The federal role in transportation is supplementary to the heavier financial burden of state and local governments. In the reform of the federal tax program, restrictions on the use of financial instruments designed to fund transportation must not be included. The cost of public facilities for transportation essential to national security and economic prosperity will only be increased under such proposals.

Currently, the federal support level for highways and public transportation is not capable of satisfying the traditional federal share in these programs. In response, state and local governments have been striving to significantly increase their own funding levels. Further exacerbating the difficult challenges facing the states has been the consistent federal abuse of the user-supported trust fund concept of transportation finance. Limitations on obligations, delayed authorizations and appropriations, unrelated requirements and other regulatory barriers greatly hamper the states' ability to provide adequate transportation services in an era of severely limited resources. Abuse has reached such critical proportions that the very fabric of the nation's transportation system is threatened. If left unresolved, the federal government's compact with the American people to deliver safe, efficient, and effective transportation services in return for user fees will have been irreparably damaged.

If even less federal funding is to be available, service levels will inevitably be reduced crippling the nation's economy and choking the very mobility which has made this nation so great.

It is in the light of these documented findings that AASHTO must view matters before the 99th Congress. In so doing, however, certain inescapable facts should be kept in mind. These include the increased movement of military traffic, growing reliance on trucks in the flow of interstate commerce, and a continuing increase in their size and weight to improve productivity. Another is the increasing congestion in rapidly growing urban areas of America. The accelerated deterioration of highways and bridges carrying larger, heavier and more numerous loads and the growing congestion in suburban areas have left the country with an imbalance between required surface transportation improvement projects, and the resources available to fund them.

The implementation of the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985 requires that difficult choices be made by this Congress. During 1986 Congress must face the demands of this Act, and also enact new surface transportation legislation. While the requirements of deficit reduction are indeed pressing, vital surface transportion needs cannot be ignored nor can the federal compact with highway users be abandoned without endangering the economic vitality and mobility of this nation. To do so will destroy the long standing federal-state partnership which has made these United States of America the most mobile nation in the world.

A number of areas concerning highways and public transportation must be addressed this year, and for this second session of the 99th Congress AASHTO supports the following overall principles and specific program recommendations:

General Principles

1. Highways in the United States have traditionally been a government responsibility.
2. The health of the federal-aid highway program and the federal-aid system is critical to the economic well-being and national defense of the country.
3. The federal-state partnership has produced the best highway system in the world, having served the nation well in so doing.
4. The federal-state partnership in surface transportation can only be retained through enactment of a multi-year reauthorization of transportation programs.
5. The nation's Interstate highway system has vastly improved the safety and mobility of all Americans, and the accessibility and economic viability of each of the fifty states.
6. The modern federal-aid highway system has been developed on a pay-as-you-go basis, financed primarily with user fees deposited into a Highway Trust Fund dedicated to carrying out the specific purposes of the federal-aid highway program.
7. The nation's highway program is severely underfunded by a substantial amount compared to present requirements to maintain even minimum acceptable service levels, much less serve future requirements.
8. The present federal-aid highway program is less effective than it should be, disruptive through its current instability, and misleading in that it purports to adequately address the nation's highway requirements.
9. The use of the Highway Trust Fund to balance the general fund budget breaks faith with the statutory compact made with highway users; masks the real deficit problem; and is incompatible with a stable and predictable federal-aid highway program.
10. Public transportation provides essential mobility to the nation's population, and is a vital component of the country's surface transportation system.

Recommendations

AASHTO makes the following recommendations:

1. Congress and the Administration should enact a multi-year reauthorization of transportation programs before October 1, 1986, when the current authorization legislation ends.

2. The federal Highway Trust Fund should be extended indefinitely to provide permanent, predictable and adequate funding for surface transportation purposes.

3. Reauthorization language must ensure program stability and reliability by including multi-year obligation and contract authority for surface transportation programs.

4. Highway user fees should be placed in the Highway Trust Fund and used only for transportation programs. Congress and the Administration should achieve deficit reduction requirements without violating the compact with the American people on the collection and use of highway user fees. Highway user fees should not be used for artificial and deceptive deficit reduction efforts.

5. Highway user revenues must be fully returned to the states through timely authorization, apportionments and spending authority equivalent to all revenues accruing to the Highway Trust Fund.

6. Transportation user revenues and interest accruing to transportation trust funds should be used only for transportation purposes.

7. The twin goals of completing the Interstate system as presently defined (including Interstate substitute projects) by 1990, and providing for on-going preservation of the nation's Interstate highway system, remain AASHTO's number one priority. Sufficient funding and spending authority to meet these twin goals must be guaranteed in the next reauthorization bill.

8. The federal government should provide general fund assistance in the provision of adequate public transportation services as a separate program at stable and predictable funding levels.

9. Congress and the Administration should consider the concept of separate highway and public transportation block grants.

10. Funding of transit Interstate substitution projects should continue to be derived from the general fund, and not shifted to the Highway Trust Fund.

11. The Congress and the Administration should not unduly constrain the states in their use of tolls, bonds and other financial options to support transportation facilities.

12. If Congress and the Administration do not enact authorization, apportionments and spending authority equivalent to all revenues accruing to the Highway Trust Fund, federal taxes should be proportionately reduced.

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

THOMAS D. LARSON, President
Secretary
Pennsylvania Department
of Transportation

FRANCIS B. FRANCOIS
Executive Director

June 12, 1986

The Honorable Lloyd Bentsen
Committee on Environment and Public Works
SD-456 Senate Dirksen Building
Washington, D. C. 20510

Dear Senator Bentsen:

This will respond to the five questions presented in your letter to me of June 3, 1986, by way of supplementing my May 20 testimony on behalf of AASHTO before your Subcommittee on Transportation.

The attachment to this letter presents our response to the five questions posed, and we trust these responses will facilitate the Subcommittee's work. As usual, we will be pleased to provide any additional information upon request.

In closing, on behalf of AASHTO I want to thank you for your obvious interest in enactment of a highway reauthorization bill. The member departments constituting AASHTO strongly support enactment of a multi-year bill before October 1, and offer the Subcommittee our continued assistance toward that end.

Very truly yours,

Thomas D Larson

Thomas D. Larson, P.E. By FBF
President

TDL:FBF:mlm

EXECUTIVE OFFICE: 444 N. Capitol Street, N.W., Suite 225 Washington D.C. 20001 Telephone (202) 624-5800

June 12, 1986

Responses to Highway Hearing Questions Posed by Sen. Lloyd Bentsen

by

Thomas D. Larson, President
American Association of State Highway
and Transportation Officials

Q.1. Would you summarize the status of AASHTO with respect to your potential participation in the Strategic Highway Research Program (SHRP). Is AASHTO ready to proceed with administration of the research program? Will you describe what AASHTO believes will be its role in this program?

Q.2. Since SHRP is only a four year program, what is your recommended approach for research into long term (i.e., greater than four years) technical issues?

Response to Q.1 and Q.2:

SHRP is now in an interim stage - the research plan has been developed, but funding as proposed in S. 2405 is required before actual research can begin. However, progress continues in preparing for the actual implementation of the planned SHRP research:

During recent months:

1) A management arrangement with the National Academy of Sciences/National Research Council (NAS/NRC) has been developed by AASHTO and the Federal Highway Administration; transfer of leadership from AASHTO to the NAS/NRC will be completed over the next month.

2) A 3-party memorandum of understanding among the NAS, FHWA and AASHTO has been executed to formalize the conduct of SHRP under NRC management.

3) A SHRP Executive Committee has been appointed by the NAS in consultation with the FHWA and AASHTO, comprised of a chairman and 14 voting and 5 ex officio members, to provide overall direction for SHRP.

4) A search is underway for a permanent SHRP Executive Director, and staffing on an "on loan" basis is being pursued.

In short, under these arrangements, the structure for implementing SHRP will soon be fully in place, certainly by October 1, 1986. AASHTO's role is as a full partner with the FHWA and NAS in the conduct of SHRP, with its representatives on the Executive Committee representing the Association's interests.

With respect to the longer term implications of SHRP, there will clearly be some continuing efforts, such as long term pavement performance monitoring, which will be necessary after the expiration of SHRP. However, since the objective of SHRP is to focus intensive effort on identifying innovations in six specific areas which hold promise for early and significant payoffs, the 5-year life presently envisioned for SHRP is felt to be sufficient. No second generation program is currently planned for SHRP, but experience and emerging research requirements over the next five years will obviously guide our thinking on this matter.

In response to your second question, these are important technical issues that will require more than five years of research effort to produce results of practical value to AASHTO member departments. We expect research on such long-term problems to continue to be addressed through present highway research programs, which should continue. The present system has demonstrated the capacity to produce (1) a steady stream of incremental improvements in highway technology resulting from applied research and (2) major innovations on long-term problems following years of research of a more fundamental nature. It is the explicit expectation of all of us who support SHRP that the research programs currently serving the highway community will continue to flourish during and after SHRP.

Q.3. Please provide your suggestions on eligibility criteria for technical assistance to Disadvantaged Business Enterprise (DBE) firms. In your testimony you suggest that we "acknowledge the transition nature of the DBE program so as to place it in a temporary perspective". What are you suggestions as to how to do this?

Response to Q.3:

When the AASHTO Task Force deliberated the problems associated with the DBE program, it also examined the original intent of Section 105(f) of the 1982 STAA. The Task Force acknowledged that the intent of Section 105(f) was to increase the share of transportation business done by DBE firms. Consequently, the program was seen as temporary; presumably, it would terminate once DBE firms captured a larger share of transportation business.

While the AASHTO DBE policy generally refers to transition strategies which would lend to accomplishment of what we believe to be Congress' goal in enacting Section 105(f), the Technical Report prepared by the Task Force was more specific. The report provides several recommendations which would contribute to DBE firms capturing a larger share of transportation business activity, including a number of items related to training, financial and technical assistance. A copy of the report is enclosed.

DBE firms require development, both in terms of bringing new firms on line and in terms of enhancing the capabilities of those firms already participating in the program. The Task Force report suggests that the development of DBE firms requires a structured approach addressing, at minimum, three fundamental areas:

1) management development

2) technical training

3) financial assistance.

Under the current supportive services program, both the funding and scope relating to eligibility criteria are inadequate to support the proposed three tiered program. Regarding funding levels, a more reasonable approach would be to provide a "takedown" option allowing states to use a small percentage, perhaps up to 1 percent, of their highway apportionments to help finance DBE training and development activities. Regarding eligibility criteria, current law needs to be broadened. For example, what good does it do to develop a firm to "bond ready" status only to have a bonding company reject its application? Federal funds could provide a bond guarantee and ensure this element of development can be completed. The same principle also would apply to loan guarantees. Bonding and financing are two areas where DBE firms critically need assistance, particularly firms attempting to enter the transportation marketplace. In sum, substantially broadened eligibility criteria, coupled with increased funding, would better allow a state to develop DBE capability and capacity consistent with market conditions in the state.

Q.4. What are examples of the incentives you would suggest to replace sanctions currently imposed to achieve adherence to the 55 MPH and minimum drinking age requirements? Explain how these incentives will accomplish their objectives and if they will require additional funds.

Response to Q.4:

AASHTO has long held that incentives are more appropriate and effective than sanctions, in general, and in particular as they relate to the 55 miles per hour speed limit and minimum drinking age requirements. One possibility would be to make a portion of the 402 safety funds discretionary and to award these funds for superior performance in the identified areas. Another possibility would be to provide preference in any re-distribution of obligation authority to those states which exhibited superior performance in these areas. Neither of these approaches would require additional funding. Beyond these incentives, federal administration of the 55 miles per hour speed limit requirements could be restructured to recognize that speeding at 80 miles per hour is more serious than at 60 miles per hour. Administration of the 55 miles per hour requirements in a manner which provides an appropriate scale for this differentiation would cut down the actual speed differential and contribute to highway safety.

Q.5. AASHTO advocates the use of tolls on federal-aid highways where "uniquely high maintenance, construction or reconstruction costs exist", with no obligation to repay federal funds used for the facility. What criteria do you propose in determining the uniqueness required to qualify for tolling? What do you suggest the respective roles of the federal and state governments be in this process?

Response to Q.5:

Criteria for determining "uniquely high ... costs" where toll financing might apply would in general be a comparison of the cost of construction on reconstruction of the segment in question with the State's annual apportionment for the applicable federal-aid system.

In the case of maintenance, a comparison of the costs of operating and maintaining the segment in question with the average costs of operating and maintaining other highways in the state with a similar number of lanes and geometric design could be used to determine "uniquely high ... costs."

In the case of construction or reconstruction to add capacity, the determination of "high" costs could be driven by the traffic volumes to be accommodated twenty years hence as well as the cost of acquiring required right-of-way. Special consideration should be given to high growth corridors in urban areas experiencing development pressures and rapid increases in population.

In the case of in-kind reconstruction of worn out pavements, special consideration could be given to the costs associated with the age of pavement, impact of weathering, and volume of heavy trucks, both historical and those to be accommodated by the improvement.

Regarding the "respective roles of the federal and state governments," states should have the lead. Proposed projects would be initiated at the state level and could be justified based on criteria mentioned above. States should have complete flexibility in pooling various sources of funds including state funds, local funds, private contributions (including R/W donations) and tolls with an upper limit on the amount of federal participation where toll financing is proposed. The federal government would review proposed projects against legislated criteria. This is consistent with the traditional federal-state relationship as defined in Sec. 145 of Title 23.

Testimony of

The Associated General Contractors of America

Presented to

The Subcommittee on Transportation

of the

United States Senate

May 20, 1986

on the topic of

S.2405

The Federal-Aid Highway Act of 1986

AGC is:

- More than 32,000 firms including 8,400 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;
- 110 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and minicipal-utility facilities;
- Approximately 50% of the contract construction by American firms in more than 100 countries abroad.

I am James W. Supica, a highway contractor from Lenexa, Kansas. I am here today in my capacity as Chairman of the Highway Division of the Associated General Contractors of America. I am accompanied by Highway Division Staff Director John Gentille.

The Associated General Contractors of America and its 110 chapters nationwide represents more than 32,000 firms, including 8,400 of America's leading general contracting companies which are responsible for the employment of more than 3,400,000 individuals. These member contractors perform more than 80 percent of America's contract construction of highways, airports, commercial buildings, industrial and municipal-utilities facilities.

Mr. Chairman, I would like to take this opportunity, on behalf of AGC's entire membership, to again commend this subcommittee for the leadership it has shown, especially over the last several years, in preserving and enhancing this nation's highway transportation system. That leadership was clearly displayed in 1982 with passage of the Surface Transportation Assistance Act, truly a landmark piece of legislation. Leadership was again shown earlier in this Congress through the Subcommittee's decisive action ensuring prompt passage of a clean Interstate Cost Estimate. At AGC we feel secure in the knowledge that this Subcommittee's leadership will again bring forth legislation which, like most of the 1982 Act, properly addressed the many complex and challenging issues facing the Federal-aid Highway System.

Mr. Chairman, I welcome and appreciate this opportunity to apprise the Subcommittee of AGC's views on S.2405, the Federal-Aid Highway Act of 1986, especially with regard to two issues of paramount importance to AGC: capital investment levels needed through the end of this decade to preserve and improve the Federal-aid Highway System; and the devastating impact the Disadvantaged Business Enterprise (DBE) program, particularly the Section 105(f) provision of the 1982 Act, will continue to have on the highway program and the construction industry unless eliminated by the Congress in the 1986 authorizing legislation.

Before getting into these issues, however, I want to first emphasize this morning the overriding need for prompt action by the Congress on a Highway Program Reauthorization. When one sets aside all the other issues, the unavoidable fact remains that there are little more than sixty legislative days left before the highway program's expiration date. Unless a highway reauthorization is enacted by October 1, the road and bridge improvement program of every state will suffer a most serious setback. Accordingly, AGC encourages this subcommittee to continue its leadership role by moving highway legislation forward as expeditiously as it considers possible.

NEEDED INVESTMENT LEVELS FOR THE FEDERAL-AID HIGHWAY PROGRAM

AGC has reviewed the required capital investment levels for the Federal-aid Highway System put forth last year by AASHTO in its report, "A New Focus for America's Highways". The AASHTO report indicated that over the nine year period from 1987 through 1995, required Federal capital investments, on an annual basis, to preserve the Federal-aid system are from $21 to $23.5 billion.

AGC supports these higher investment levels and considers them to be conservative estimates, as does AASHTO in its report, since they may not even adequately recognize required improvements on the Interstate and Primary Systems to provide ride quality and service levels which are acceptable to the travelling public.

AGC has also reviewed the "Sixth Annual Report to Congress on the Highway Bridge Replacement and Rehabilitation Program" and the "Report to Congress on the Status of the Nation's Highways: Conditions and Performance," prepared by the Federal Highway Administration. AGC believes that the findings of these two studies support the required higher capital investment levels for the Federal-aid Highway System put forth by AASHTO in its report.

APPROPRIATE FEDERAL RESPONSE TO NEEDED INVESTMENT LEVELS

AGC believes that the only appropriate Federal response to these capital investment needs for the Federal-aid Highway

System is to provide the needed user fee revenues and program authorizations to see to it that the requirements are met. Obviously, with Highway Trust Fund revenues currently projected to average $13.25 billion annually through the remainder of this decade, meeting these required investment levels will necessitate further increases in user fees at the Federal level. AGC stands ready, as it was in 1982, to explain to the driving public the overriding economic importance of providing the needed Federal user fee revenues to adequately invest in this nation's Federal-aid Highway System.

If, for other considerations, the Congress decides that the 1986 highway legislation will not contain further needed increases in highway user fee revenues, AGC strongly encourages this Subcommittee to see to it that the 1986 legislation contains program authorizations at the maximum levels which current Highway Trust Fund revenues will support.

AGC believes that with the Trust Fund's considerable cash balance, current Trust Fund revenues will support Federal-aid highway program authorizations in the $15.5 billion range through 1990. There is no question; however, that Congress will have to again address the issue of further increases in Federal highway user fees. If in 1986 Congress decides to not consider the issue, it will surely have to address it in conjunction with the next Surface Transportation Assistance Act, for the capital investment requirements will not go away. If unmet, they will only increase.

In introducing S2405, Senator Symms stated his intention to offer, when the bill is considered by the Environment and Public Works Committee, an amendment to increase the funding levels currently contained in S2405, to allow for a four-year drawdown of the Highway Trust Fund.

Reducing the current 10 billion dollar balance in the Highway Trust Fund to the minimum level required for cash flow purposes, as the Chairman's amendment would provide for, has long been advocated by AGC and we strongly support the Chairman's amendment. Proponents of lower funding levels for the purpose of maintaining the trust fund's current balance, are engaging in the questionable budgetary practice of using the current balance in the Highway Trust Fund as a deficit reduction tool.

AGC questions this practice because by not allowing the expenditure of Highway Trust Fund dollars, the government will not be reducing the type of government spending which is contributing to the deficit. It will merely delay the expenditure of dedicated user fee revenues which have already been collected, are sitting in the Highway Trust Fund and which, by law, can ultimately only be spent for highway improvements.

Spending on our nation's highway system has never contributed a penny to the deficit. It cannot. User fees are collected from the nation's highway users, placed in the Highway Trust Fund and dedicated by law to be spent on the nation's highway system. The Highway Trust Fund is in reality a very simple and efficient balanced budget account.

It must also be understood that some items in the budget are simply more economically significant in the long-term than others. An important case in point is investment in the nation's transportation infrastructure. The long-range impact on the nation's economy of failing to go forward with vital transportation infrastructure projects will be most serious. The loss to the economy of allowing continued deterioration of our transportation infrastructure has been clearly demonstrated. Those losses are measured by lost economic output, fewer jobs and lower consumer spending for each household.

These negative effects, enormous as they are, are only part of the costs which would be inflicted on the economy. Every infrastructure repair delay adds to the eventual cost of that repair. Judicious pruning of federal spending should be undertaken where the maximum savings can be achieved while sacrificing the least in terms of the country's future economic potential. Sacrificing proven and much-needed transportation infrastructure investments for supposed short-term deficit reduction gains will only serve to saddle future generations with a low-growth economy and create a transportation system burdened with much greater repair and replacement costs. Those future generations will be penalized, as they will at some point be forced to foot the much greater infrastructure repair bill they will inherit as a result of this generations's fiscal short-sightedness.

THE DBE PROGRAM

In introducing S2405, the Chairman also announced his intention to offer an amendment during committee markup to eliminate the DBE Program, stating his belief that:

- One; in its current form, it violates constitutional guarantees of due process and equal protection of law because it grants disadvantaged status, and thereby, preferential treatment, to individuals based solely on their race; and
- Two; in practice, many states seem to have used this program to establish a quota system for the award of federal-aid contracts.

On behalf of AGC's entire membership -- which is keenly aware of the harm the DBE Program has imposed upon the construction industry and the competitive bidding process -- I want to commend and thank the Chairman for having the courage to tell it like it is on this issue which is of such great concern to my industry.

At AGC, we find it extremely heartening when knowledgeable individuals take the time to look beyond the rhetoric which surrounds the DBE Program, and to examine in an impartial manner, whether this program has achieved any measure of success. We believe that upon such examination, any reasonable person will reach the conclusion which AGC has reached, which is that the DBE Program has been little more than a counterproductive and costly exercise in government mandated discrimination.

The DBE Program grants special preferences based solely on race, in a manner which fails to provide individuals with the skills and knowledge that will enable them to obtain a permanent and meaningful place within the construction industry. AGC believes the government would do far better to redirect its energies toward establishing long-term, meaningful educational and training programs for disadvantaged individuals, rather than creating quick-fix, counterproductive and costly DBE giveaway programs.

Just as you don't create a doctor by giving him or her a patient, you can't create a contractor by "giving" him or her a contract, and that is essentially what the DBE Program does. DBE firms are really no different than all emerging small businesses in that they face certain obstacles as they attempt to gain entry to, and remain a successful part of the construction marketplace. The obstacles are well known and include inadequate availability of working capital, lack of technical expertise, difficulty in obtaining bonding and problems with federal, state and local paperwork and regulations.

Despite adequate identification of these obstacles, the DBE Program is just not geared toward removing these obstacles. Instead, it requires that ten percent of highway and transit work be directed toward minority-owned firms, whether or not, in a given state, they exist in sufficient numbers to perform the work. The result has been, in the Highway Program for example, a quota requirement which is discriminating against thousands of non-minority firms, which is costing the taxpayers hundreds of millions of dollars annually, which is doing little, if anything, to create qualified and lasting minority construction firms; which is rather, resulting in a shell game of meaningless and misleading numbers and data, and which is forcing thousands of well-meaning highway contractors, in order to meet unrealistic DBE quotas, to enter into business relationships with DBEs which are subsequently being viewed by uninformed observers as questionable, immoral or even illegal.

Section 105(f) of the 1982 Surface Transportation Assistance Act requires that at least ten percent of the Act's funds be expended with business concerns owned by specially designated minority group members, or "Disadvantaged Business Enterprises" (DBEs), to the exclusion of all other bidders.

Such a requirement is particularly harmful in highway construction which does not lend itself to a large or significant amount of subcontracting. Highway construction is an equipment intensive and capital intensive industry. On the average, 90 percent of a typical highway construction contract is accomplished by the general contractor's own work force, leaving approximately 10 percent available for subcontract award.

The result is that under the mandate of Section 105(f) to subcontract 10 percent of the amount of the highway contract to a Disadvantaged Business Enterprise (DBE), and with only 10 percent of the contract available to subcontract, general contractors on highway construction jobs are being forced to award 100 percent of that subcontract work to minority firms, to the harmful exclusion of non-minority subcontracting firms.

Another variation of this exclusionary theme, utilized by some states to meet the requirements of the DBE Program, is to simply set aside entire contracts and limit bidding and award only to DBE firms.

In either variation, the result is the same. The awarding entity -- be it general contractors for subcontract awards or state transportation departments for prime contract awards -- cannot make contract award decisions solely on the basis of lowest price, or merit, or competence or any other relevant factor, but must, in fact, make award on the basis of whether the firm is owned and controlled by individuals who meet the racial definition required by Section 105(f).

AGC can think of no other accurate way to describe the DBE Program than as a race conscious program which, under the banner of affirmative action, is resulting in affirmative discrimination.

In an effort to obtain detailed information on the impact on the construction industry of the DBE Program, AGC recently conducted a nationwide survey of its highway contractor membership. Over 400 responses were received. The survey allows one to draw the following conclusions with regard to the impact of the DBE Program, particularly Section 105(f) of the 1982 STAA:

Section 105(f) of the Surface Transportation Assistance Act of 1982 was enacted without an adequate understanding of the availability of qualified DBE firms or the time required by new DBE firms to develop expertise in the types of transportation construction work authorized by the Act.

Many problems are being encountered in the implementation of Section 105(f), including project delays and extra costs such as those documented by the General Accounting Office in its study of the 10 percent minority business enterprise requirement of the Public Works Employment Act of 1977.

Because of the manner in which the Department of Transportation is dictating that the states implement Section 105(f), contractors bidding on Federal-aid transportation construction projects must meet or exceed DBE goals before they will be awarded the contract; i.e., Section 105(f) is being implemented as a quota program.

The implementation of Section 105(f) as a quota program is causing many non-minority specialty contractors to be forced out of business, even though they often are quoting the lowest price to prime contractors, since prime contractors, in order to meet contract quota requirements, are being forced to use minority subcontractors, regardless of price. An entire class of non-minority contractors is being systematically excluded from the right to participate in the very type of work which sustained them and their employees over the years, due to the fact Section 105(f) has, in effect, exclusively reserved such work for DBE firms.

Because Section 105(f) is being implemented as a ten percent quota requirement; because only ten percent of a highway contract is normally subcontracted by the prime contractor; because the type of work which is normally subcontracted is in specialty areas such as landscaping, guardrail installation, fencing, striping and signing; and because the overwhelming majority of DBEs exist in these specialty areas, which require minimal initial capitalization, Section 105(f) is threatening the very existence of many small non-minority specialty subcontractors in every region of the country.

For all these reasons, AGC believes the time has come for DBE and WBE goal and quota requirements to be eliminated from federal-aid highway contracts and we will strongly support Senator Symms' amendment on this issue.

OTHER FEDERAL-AID HIGHWAY PROGRAM ISSUES

The following is a compilation of AGC's positions on other program issues which are addressed in S.2405, or if not addressed in the measure, are likely to be considered by the Congress in conjunction with the 1986 highway legislation:

1. 85 Percent Minimum Allocation Guarantee

AGC supports the continuation of the minimum allocation guarantee, on a permanent basis, at at least the 85 percent level, with obligations under the program remaining outside the obligation ceiling. Accordingly, AGC strongly supports Section 118 of S.2405, which would permanently extend the minimum allocation, without a cap being placed on authorizations.

2. 1/2 Percent Minimum Allocation Guarantee of Interstate Construction Funds

AGC continues to support the 1/2 percent minimum allocation guarantee of each year's apportionment of Interstate construction funds, as provided for in S2405.

3. Interstate Cost Estimate Approval Procedure

AGC supports enactment, either as part of a highway program reauthorization or as a separate piece of legislation, of a provision providing for the administrative approval of Interstate Cost Estimates.

As the Subcommittee knows, approval of an Interstate Cost Estimate is needed for the Federal Highway Administration to apportion Interstate construction, 85 percent minimum allocation, and Interstate transfer funds on October 1st of this year. AGC encourages the Subcommittee to move ICE legislation as a separate bill on a "fast track" if it appears that the 1986 authorizing legislation will not be approved by October 1st.

4. Interstate Substitute Transit Projects

AGC opposes funding Highway Substitute Transit Projects out of the Highway Trust Fund and commends the sponsors of S2405 for not providing for such a diversion of trust fund revenues in their legislation.

5. Gasohol Exemption

Subsidizing the gasohol industry may be sound public policy to support farm prices and/cr decrease our dependence on foreign energy supplies. But AGC strongly believes that subsidizing the gasohol industry at the expense of the nation's highways and bridges is not sound public policy. It violates the user fee principle of the highway program, and the Highway Trust Fund simply cannot afford it. The exemption is costing the trust fund almost $500 million annually. If the gasohol industry must continue to be subsidized, the subsidy should come from general revenues. A vehicle powered by gasohol contributes to the wear and tear of our highways and bridges the same as a vehicle powered by gasoline or diesel fuel. Both vehicles should pay their fair share of highway user fees. The gasohol exemption should be repealed and AGC respectfully requests the Subcommittee's support on this most important issue.

6. Toll Roads

AGC supports permitting federal funds to be used in the construction of new toll roads or the reconstruction of existing toll roads provided the toll roads are made free when the bonds are paid off, or alternatively, the tolls are allowed to be left on if the excess is used for road improvement purposes. AGC favors enactment by this Congress of such a change in current federal toll policy.

7. Obligation Ceilings on the Federal-aid Highway Program

AGC continues to support the elimination of obligation ceilings on the Federal-aid Highway Program. Removal of the Highway Trust Fund from the Unified Budget, long advocated by AGC, would eliminate the "need" for such obligation ceilings.

8. Restrictions on Rate of Obligations

If obligation ceilings continue to be imposed on the Federal-aid Highway Program, AGC believes no restrictions should be placed on the rate at which the States can obligate available Federal funds during the fiscal year.

9. Exemption of Interstate Completion Program from Annual Obligation Ceilings

AGC supports the recommendation of AASHTO, contained in its report "A New Focus for America's Highways," that as long as obligation ceilings are placed on the Federal-Aid Highway Program, obligations of Interstate construction funds by the States should be exempt from the obligation ceiling to spur Interstate completion. AGC believes such a procedure would help ensure Interstate system completion by 1990.

10. Extension of the Highway Trust Fund

AGC continues to support an indefinite extension of the Highway Trust Fund.

11. Combining Highway and Transit Programs

AGC opposes the "block grant" proposal of the Administration which would combine the urban, secondary and non-primary bridge programs with the mass transit account of the Highway Trust Fund, thereby making all these funds available for either highway construction or mass transit capital projects. AGC commends the authors of S2405 for not including such a provision in their legislation.

12. Motor Carrier Safety Assistance Program

AGC recognizes that this issue does not fall within the jurisdiction of the Subcommittee on Transportation. However, AGC opposes this proposal as contained in the measures being advanced by the Administration and the House, to fund motor carrier safety grants to the states out of the Highway Trust Fund, at the rate of $50 million per year, considering such a concept to be a serious diversion of scarce trust fund revenues. AGC respectfully seeks the Subcommittee's support on this issue.

ASSOCIATED GENERAL CONTRACTORS' RESPONSES TO QUESTIONS FROM SENATOR BENTSEN

Highway Hearing Questions

Question #1

In your testimony, you suggest an annual highway program authorization level of $21B to $23B dollars for the federal-aid system, and user fee revenues to support this level of funding. Projections by the U.S Treasury and CBO show expected Trust Fund revenues in the $13B to $14B dollar range for the next several years. How much of a tax increase would be required to support your recommended level of funding? Would you be specific as to how you would like to see the additional required revenue generated.

Response

An increase of approximately seven cents in the federal motor fuels tax would be required to generate revenues sufficient to increase program authorizations to the levels indicated as necessary by AASHTO. As expressed in our testimony, AGC believes the only appropriate Federal response to these capital investment requirements is to provide the needed user fee revenues to see to it that the requirements are met (i.e.; AGC favors such an increase in the federal motor fuels tax.)

Accordingly, AGC continues to believe that the 1986 highway legislation should provide for such funding levels, and the user fee revenues required to support these levels. AGC fully recognizes that some will label such a position as impractical. However, if in 1986 Congress decides to not address the issue, it will surely have to address it in conjunction with the next highway reauthorization, for these capital investment requirements will simply not go away just because they are not addressed. If unmet, they will only increase and future generations will be penalized because they will at some point, be forced to foot the much greater highway and bridge repair bill they will inherit as a result of this generation's reluctance to make the tough choices which are at hand.

If, for other considerations, the Congress decides that the 1986 highway legislation will not contain further needed increases in highway user fee revenues, AGC strongly encourages this Subcommittee to see to it that the 1986 legislation contains program authorizations at the maximum levels which current Highway Trust Fund revenues will support. AGC believes that with the Trust Fund's considerable cash balance, current Trust Fund revenues will support Federal-aid highway program authorizations in the $15.5 billion range through 1990.

Reducing the current 10 billion dollar balance in the Highway Trust Fund to the minimum level required for cash flow purposes, as the Chairman's amendment would provide for, has long been advocated by AGC and we strongly support the Chairman's amendment.

Proponents of lower funding levels for the purpose of maintaining the trust fund's current balance, are engaging in the questionable budgetary practice of using the current balance in the Highway Trust Fund as a deficit reduction tool.

Question #2

Your criticism of the DBE program states that it fails to provide individuals with the skills and knowledge that will enable them to obtain a permanent and meaningful place within the construction industry. What plan would the Associated General Contractors offer to accomplish this goal?

Response

The Government would do far better to redirect its energies toward establishing long-term, meaningful educational and training programs for truly disadvantaged individuals, rather than creating quick-fix, counterproductive and costly DBE giveaway programs.

As noted in AGC's testimony, just as you don't create a doctor by giving him or her a patient, you can't create a contractor by "giving" him or her a contract, and that is essentially what the DBE program does. DBE firms face precisely the same problems as all emerging small businesses in that they face certain obstacles as they attempt to gain entry to, and remain a successful part of the construction marketplace. The obstacles are well known and include inadequate availability of working capital, lack of technical expertise, difficulty in obtaining bonding and problems wih federal, state and local paperwork and regulations. Despite adequate identification of these obstacles, the DBE program is simply not geared toward removing these obstacles; instead, it requires that ten percent of highway and transit work be directed toward minority-owned firms, whether or not, in a given state, they exist in sufficient numbers and with the requisite qualifications to perform the work.

Question #3

You state that the DBE program is "forcing thousands" of contractors to engage in "questionable, immoral, and illegal" business relationships with Disadvantaged Business Enterprises. Can you tell us how many firms have had to do this? Is this situation nation-wide, or is it worse in certain areas? Please be specific.

Response

AGC's testimony stated that the DBE Program "Is forcing thousands of well-meaning highway contractors, in order to meet unrealistic DBE quotas, to enter into business relationships with DBEs which are subsequently being viewed by uninformed observers as questionable, immoral or even illegal." The operative word in this statement is "subsequently." Our point is that

Section 105(f), as interpreted and implemented by the Department of Transportation and the Federal Highway Administration, literally required an overnight nationwide tripling of DBE participation in the highway program, without any consideration as to whether there existed at the time a sufficient number of qualified and interested DBE firms to perform the work. In many rural states, the required increase in DBE participation far exceeded a three-fold increase.

Because in the great majority of the states there did not already exist a sufficient number of qualified DBE firms to meet the newly-required, greatly-increased DBE participation requirements, and because the Federal and State DOTs treated the DBE participation requirements as quota requirements, prime contractors bidding on highway projects were suddenly forced to seek out individuals meeting the required racial or ethnic criteria set forth in Section 105(f), and to provide these individuals with the necessary financial, technical, managerial, and other types of assistance which would enable them to begin participating in the highway program as DBEs.

Quite unfortunately for many prime contractors and DBEs, these relationships were entered into without the benefit of any consistent or coherent Federal or State guidelines describing acceptable relationships between prime contractors and new, developing DBE firms, and the types of "acceptable" assistance which could be provided to such firms.

Now, three and one half years after Section 105(f) was enacted -- and despite the belated recognition in January, 1985 by the Federal Highway Administration of the legitimacy of special relationships between established prime contractor/mentor firms and newly established DBE/protege firms, where the "established firms provide fledgling firms with specialized assistance..." -- the relationships between prime contractors and newly-formed DBEs continue to be questioned in almost every state as evidencing a lack of "legitimacy" or "independence" of the DBE. Many of these DBEs -- formed with the assistance of prime contractors who had no choice under the mandate of Section 105(f) but to help disadvantaged individuals get established in business -- are now being labelled as "shams" or "fronts" and are being decertified as DBEs. DBEs and prime contractors are also now being prosecuted and debarred from participation in the highway program as a result of what are now, after the fact, being labelled as "sham" or "front" operations.

The industry has quite literally been caught in a dilemma. The DBE Program requires levels of DBE participation which, in almost every State, cannot be obtained only through the use by prime contractors of existing, experienced DBE firms. Yet, the States now, retroactively, refuse to recognize as legitimate, many of the types of special assistance which have been provided by prime contractors to disadvantaged individuals. These forms of special assistance -- incorrectly considered by State officials as evidencing a "sham" arrangement, -- include, for example:

- the provision of working capital by the prime contractor to DBE;
- the provision of technical and management assistance by the prime contractor to a DBE in areas such as plan interpretation, estimating, cost accounting methods, project management; and
- the provision of needed construction equipment, through leasing arrangements, to DBEs.

ARTBA
American Road & Transportation Builders Association

STATEMENT

of the

AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION

to the

SUBCOMMITTEE ON TRANSPORTATION

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

Reauthorization of the

Federal-Aid Highway Program

Presented by: R. E. Hirschman

ARTBA Past Chairman

Accompanied by: Daniel J. Hanson, Sr.

ARTBA President

99th Congress

Second Session Tuesday, May 20, 1986

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525 School Street, S.W., Washington, D.C. 20024 • (202) 488-2722

Mr. Chairman and Members of the Transportation Subcommittee:

My name is Robert E. Hirschman and I am President of Elderlee, Inc., a highway construction firm located in York, Pennsylvania. Today I am here in my capacity as past Chairman of the American Road & Transportation Builders Association, and I am accompanied by the President of ARTBA, Daniel J. Hanson, Sr.

ARTBA is a national association with more than 4500 business firms and individuals concerned with all aspects of the transportation construction industry. Our members include transportation contractors, public officials at all levels of government, equipment manufacturers, material producers and suppliers, traffic safety industry firms, planning and design organizations and transportation engineering educators.

We will focus our comments today specifically on the provisions of S. 2405, the "Federal-Aid Highway Act of 1986." However, there are several key issues not addressed by this legislation that we feel have direct bearing on our nation's highway program. Those issues will be covered briefly and we thank you for giving ARTBA the opportunity to comment on these measures. We would like to submit additional comments following this committee's consideration of the testimony presented today.

Interstate System

It is very fitting that Congress should reauthorize our federal-aid highway program this year, since 1986 marks the 30th anniversary of our National System of Interstate and Defense Highways. The Interstate System -- a well planned network of 42,500 miles of controlled access roadways -- is now almost 98 percent open to traffic. It has changed the face of America, contributed greatly to our economy, provided millions of jobs and drawn our nation closer together.

If funding for the Interstate System is continued at its current level, $4 billion per year, this life-saving program can be completed by the early 1990s. It is our sincere hope that completion of the Interstate System will remain a very high priority with this subcommittee.

Authorization Level

As observed during the introduction of S. 2405, the funding level proposed in this bill is a good starting point. However, ARTBA is convinced that the authorization level of $13 billion annually for fiscal years 1987 through 1990 simply will not meet our highway capital investment needs. While $13 billion per year is certainly better than no funding at all, ARTBA strongly believes that $15.5 billion annually is a more realistic level.

A recently released study by the Congressional Budget Office indicates highway authorizations of $15.5 billion per year could be supported, given declining oil prices, increased gasoline consumption and the existing cash balance in the Highway Trust Fund.

We concur with that evaluation. Revenue to the Highway Trust Fund will exceed $12.5 billion per year and interest on the trust fund amounts to approximately $1 billion annually. The current cash balance in the trust fund now exceeds $10.0 billion. An annual drawdown on this cash balance of up to $2 billion per year, combined with incoming revenue will provide $15.5 billion in authorizations without any negative impact on the federal budget.

The total capital needs of our federal-aid highway program may still not be met, even at this higher level of funding, but it would be a big step in the right direction. Exhibit "A", attached to this testimony, indicates ARTBA's specific authorization recommendations for the Fiscal Years 1987-1990 compared to the provisions of S. 2405.

Appropriate Funding Levels

To compare the funding levels under consideration with projected needs we need look no further than a 1985 report to the 99th Congress by the Federal Highway Administration. In that report, the FHWA estimates that total highway capital needs of $22.2 billion per year, just to maintain 1983 highway-user costs.

The American Transportation Advisory Council, a coalition of over eighty (80) groups and individuals concerned about the future of our nation's transportation system, also prepared a report last year that utilized FHWA's figures and examined many additional factors. That study, known as "New Directions in Transportation," estimates total highway capital needs between 1987 and 1996 at $494 billion -- or nearly $50 billion per year.

Such a funding level is not practical given today's economic climate. However, we strongly encourage this committee to consider $15.5 billion per year as an achievable authorization level. This level is clearly warranted based on the Highway Trust Fund receipts, accrued interest and a $2 billion per year drawdown of the Highway Trust Fund cash balance.

Let me also emphasize that ARTBA strongly objects to the continuation of obligation limitations on highway programs that are substantially lower than the authorization levels.

Furthermore, ARTBA strongly believes that an orderly drawdown of the cash balance in the Highway Trust Fund is essential. We should not break faith with the millions of Americans who pay their highway user-fees on motor fuels only to find that they are not receiving the highway improvements that they have paid for in advance.

List of Proposals

In the interest of time, attached you will find Exhibit "B" which summarizes ARTBA's fourteen specific recommendations for the 1986 highway legislation. It is recognized that some of these proposals are not under the jurisdiction of this committee.

Senator Symms, we commend you for offering the non-binding resolution, recently agreed to by the Senate in its fiscal 1987 budget resolution. We fully agree that over the next three fiscal years the cash balance of the trust fund should be reduced toward a minimum level of reserves, somewhere between $2 and 3 billion.

We suggest going one step beyond that point. The Highway Trust Fund should be removed from the unified federal budget process entirely. In addition, steps should be taken to protect the Highway Trust Fund from the devastating effects of the Gramm-Rudman-Hollings balanced budget law. The Trust Fund is self-supporting and in no way has contributed to our nation's deficit situation.

It is also important to realize that an estimated $500 million dollars per year in additional funds could be channeled into the Highway Trust Fund if the federal six-cent per gallon gasohol, methanol and ethanol exemption were repealed. The Administration has already gone on record as supporting removal of this exemption. ARTBA concurs that this essential step should be taken this year. While we recognize that this committee does not have authority in this area, we hope that your recommendations to the Senate Finance Committee will include repeal of the gasohol exemption.

Completing the Interstate System

As I mentioned earlier, the completion of the Interstate System by the early 1990s should remain a very high priority. ARTBA opposes the consolidation of the Interstate and Primary programs into a single unit. Such a consolidation would give the states flexibility in determining whether remaining interstate construction work should be completed or whether reconstruction of the existing Interstate System and work on the primary system is of greater priority.

However, the proposed Interstate authorization level of $3 billion per year is already $1 billion less than provided under existing legislation. Combining the Interstate and Primary programs will only reduce states' incentive to complete the Interstate System in a timely manner. Under the $3 billion proposal, the Interestate System can never be completed in the next decade.

ARTBA strongly endorses the provision in this bill that eliminates the need for any future congressional approval of the Interstate Cost Estimate or Interstate Substitute Cost Estimate. This progressive action will benefit state transportation departments that have been kept in a financial limbo each year because of funding logjams. Such action would certainly have a positive effect on those of us in the transportation construction industry who must base our own business projections on anticipated work offered under state and federal contract.

Expanded Bridge Program

ARTBA believes that the $1.5 billion in annual funding for the Bridge program will be insufficient to meet our nation's needs. In late 1984, the National Bridge Inventory classified over 45 percent of the bridges studied as "structurally deficient" or "functionally obsolete." This situation cannot continue, but that is precisely what will happen if adequate funds are not allocated for America's bridges. ARTBA recommends a level of $2.1 billion for the national bridge program.

85 Percent Minimum

ARTBA strongly endorses making permanent the 85 percent minimum allocation with respect to contributions made by each state to the Highway Trust Fund and the modifications of the Highway Trust Fund, proposed in S. 2405. We also support including the mass transit account and all other programs under the 85 percent guideline.

Toll Facilities

One potential funding mechanism not included in S. 2405 is the imposition of tolls on new roads financed with federal funds. The Administration has already shown support for such new construction.

In these days of extremely high needs and detrimental deficits, we simply cannot afford to ignore any legitimate funding source. ARTBA endorses the concept of permitting state transportation agencies to develop new toll highways and bridges in conjunction with the use of federal funds on federally-aided projects, where such projects are economically feasible.

We believe, however, that toll revenues should be used to supplement the more traditional highway funding sources. They should not become a reason for reducing existing levels of highway user-fees or avoiding necessary funding increases in the future. We oppose diverting highway-user tax funds for any non-highway purposes, including deficit reduction.

Safety and Research Programs

ARTBA supports the funding of the Strategic Highway Research Program, the rail-highway crossing program and other appropriate safety and research projects. This vital effort certainly deserves support at the federal level. The programs already underway have made significant strides in reducing fatalities and are of clear benefit to all highway users.

DBE Provision

ARTBA has one other major concern. The contracting community believes the Disadvantaged Business Enterprise program has created an unhealthy environment within the federal-aid highway program. An unreasonable responsibility is placed on the contractor to find qualified DBEs to perform work on projects with a DBE goal established without imput from the contracting industry.

This issue is not new to this subcommittee. Last November, this subcommittee responded to the industry's concerns and conducted an oversight hearing on the DBE program. The results of that hearing were obviously positive since section 130 of S. 2405 responds to several of the issues raised by ARTBA and others in testimony at the hearing.

The language proposed in section 130 is a small step forward. It does not, however, solve the immediate and real problem of insufficient DBE firms to meet the 10 percent goal arbitrarily established for most federal-aid projects. As I have stated on several earlier occasions, a contractor is not developed overnight or because a special program is created to encourage participation in work by a particular segment of our population.

Many states are now reviewing their DBE programs and finding that a small number of firms are continually receiving most of the work. These DBE firms are taking more jobs than they can adequately perform. If the goal of this program is to develop new contractors, ARTBA has been informed by its members that this has not happened in any significant way.

Recognizing the factors relating to DBE availability, ARTBA strongly believes that the section 105(f) program should not be reauthorized. If this is not possible, then S. 2405 takes two encouraging steps which ARTBA supports. First, a requirement for uniform certification of DBE firms by state highway contracting agencies will relieve some of the pressure on prime contractors to find legitimate, qualified DBE firms. A uniform set of guidelines on certification will also provide a better opportunity for DBEs to perform work in more than one state. In addition, prequalification is another necessary step.

Second, the provision in subsection (e) of Section 130 requires that a DBE perform 30 percent of the work with his own forces. This will eliminate the brokering by DBEs that serves no viable function in the construction of a project. In the highway industry, prime contractors are required to perform a percentage of work with their own forces. ARTBA believes the same should apply to subcontractors.

These two steps are encouraging. However, they do not solve the problem, particularly that raised earlier in our testimony on adequate availability of DBE firms. ARTBA firmly believes that this reauthorization act must address the problem of DBE participation by providing a mechanism which establishes goals based on DBE availability. A prequalification requirement must address the qualifications to perform the type of work and financial resources of highway subcontractors thus allowing state highway agencies to access the availability of DBEs when developing project goals.

If a reasonable goal is provided which can possibly be met, the prime contractor is relieved of a portion of the burden that the DBE program carries. If the contractor does not have to worry about a goal which he knows cannot be met, he can bid a project with reasonable certainty that it will be done at the lowest possible price and in conformance with the contract terms.

Of all contractors participating in highway construction work, the specialty contractor has been most impacted by the DBE program. ARTBA recommends that language be adopted which limits subcontracting to satisfy the DBE goal. A limitation of fifty (50) percent would be reasonable.

The contractor members of ARTBA believe that DBE firms should have the opportunity to compete in the free enterprise system and welcome their entry into highway work. If the goal of 10 percent participation is to be met, an arbitrary number is not the answer. The government must participate by providing training and financial assistance to DBEs wishing to enter the highway market.

ARTBA recommends that the Subcommittee on Transportation develop a training and financial assistance component for the DBE program. A new company must have training in highway construction techniques and business management. It also requires assistance with bonding requirements, equipment purchases and working capital. Most companies working in highway construction have developed over time after developing experience while working with another contracting company. The construction industry feels that this is the way to develop successful contracting companies. The government assistance should be provided in coordination with such experience.

The DBE program will be a complete failure if it is not to work in a fair manner for all who participate in the federal-aid highway program, non-minority as well as disadvantaged individuals. The Committee fails to provide a solution because it does not address the issue of adequate numbers of DBEs available to do the work in today's market place. ARTBA believes that our suggestions will make the program better and more workable.

Summary

In conclusion, adequate funding and a satisfactory DBE program are essential in the reauthorization bill. The Subcommittee is urged to authorize the maximum funding possible - $15.5 billion per year. Every consideration must be given to reducing the burden on highway contractors because of the DBE goal. The suggestions made in response to the Committee staff's draft language can go a long way in making the program fair and equitable to all participants in the national highway program. Other costly non-productive items such as the gasohol exemption and Davis-Bacon provisions as they relate to the federal-aid highway program should be eliminated.

EXHIBIT "A"

FEDERAL-AID HIGHWAY AUTHORIZATIONS FISCAL YEARS 1987-1990

(IN MILLIONS)

ARTBA RECOMMENDATION	
INTERSTATE-CONSTRUCTION	4,000
INTERSTATE-4R	3,200
PRIMARY	2,500
SECONDARY	700
URBAN	800
BRIDGE	2,100
MINIMUM ALLOCATION	700
I-SUB-HIGHWAYS	650
EMERGENCY RELIEF	100
PUBLIC LANDS HIGHWAYS AND FOREST	100
PARKWAYS, PARK HIGHWAYS AND INDIAN RESERVATION ROADS	150
RAIL-HIGHWAY CROSSINGS	200
HAZARD ELIMINATION	200
ALL OTHER CATEGORIES	100
	15,500

EXHIBIT "B"

1986 Surface Transportation Legislation

1. Urge that a minimum four (4) year authorization bill be passed at the earliest possible date - before July 1, 1986.

2. Provide maximum level of authorizations that Highway Trust Fund can support including all income, interest earned and drawdown on balance (Estimated annual level $15.5 Billion).

3. Make the Highway Trust Fund a permanent funding mechanism rather than merely extending it every few years. (Trust Fund expires Sept. 30, 1988)

4. Complete funding for the 42,500 mile Interstate System by the year 1990 by passing a final Interstate Cost Estimate.

5. Apportionments and annual spending authority should be equal to authorization levels.

6. The Interstate 4-R Program, Primary System and national bridge projects must be fully funded.

7. Maintain 85 percent minimum allocation return to all states, without imposition of any artificial "cap" or limitation.

8. Funding for Interstate transit substitution projects should continue to be funded from the general fund - not the Highway Trust Fund.

9. Repeal Davis Bacon provisions as they currently apply to surface transportation legislation.

10. Do not include section on DBE quotas or similar burdensome requirements in 1986 legislation.

11. Eliminate any and all federal and state gasoline tax exemptions for Gasohol, Ethanol and Methanol in 1986.

12. Oppose the passage of any oil import fee or increase in the federal gasoline tax for non-transportation purposes, such as general fund budget reduction or balancing the overall federal budget.

13. Remove the Highway Trust Fund from the Unified Budget.

14. The Highway Program should also be exempt from the provisions of the Gramm-Rudman-Hollings requirements.

1985
Chairman GARY L. GODBERSEN, Senior Vice Chairman DENVER COLLINS, JR.
Treasurer EUGENE M. JOHNSON, President and Secretary DANIEL J. HANSON, SR.
Vice Chairmen WILLIAM G. MULLIGAN, WALTER E. PUTZ, DANIEL J. SPIGAI, REED SPRINKEL
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ARTBA
American Road & Transportation Builders Association

June 16, 1986

Honorable Lloyd Bentsen
United States Senate
Washington, D.C. 20510

Dear Senator Bentsen:

Thank you for your comments about ARTBA's May 20, 1986 testimony before the Senate Subcommittee on Transportation relative to the highway reauthorization bill. Let me again express the urgency all of us in the transportation construction feel regarding the early passage of new highway legislation this year. It is imperative that this program be reauthorized as soon as possible.

In specific response to your question there is absolutely no doubt that there are not sufficient DBE's to meet the current 10 percent quota. The inclusion of WBE's in this program will not solve this problem but may tend to somewhat relieve the percentage issue. Taking all qualified DBE's and WBE's as a single group would still fall far short of the present 10 percent quota.

Once again on behalf of both ARTBA and AGC let me urge you and the Committee on Environment and Public Works Subcommittee on Transportation to not reauthorize the DBE program as a part of the 1986 highway legislation. Please note the enclosed earlier letter to Senator Steve Symms regarding this crucial issue.

Respectfully submitted,

R. E. Hirschman

Robert E. Hirschman
ARTBA Past Chairman

Enclosure

bc: Paul Chimes

ROBERT T STAFFORD, VERMONT, CHAIRMAN

JOHN H CHAFEE, RHODE ISLAND
ALAN K SIMPSON, WYOMING
JAMES ABDNOR, SOUTH DAKOTA
STEVE SYMMS, IDAHO
GORDON HUMPHREY, NEW HAMPSHIRE
PETE V DOMENICI, NEW MEXICO
DAVE DURENBERGER, MINNESOTA

LLOYD BENTSEN, TEXAS
QUENTIN N BURDICK, NORTH DAKOTA
GARY HART, COLORADO
DANIEL PATRICK MOYNIHAN, NEW YORK
GEORGE J MITCHELL, MAINE
MAX BAUCUS, MONTANA
FRANK R LAUTENBERG, NEW JERSEY

BAILEY GUARD, STAFF DIRECTOR
LEE O FULLER, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510

June 3, 1986

Mr. Robert E. Hirschman
Past Chairman
American Road and Transportation
Builders Association
525 School Street, S.W.
Washington, D.C. 20024

Dear Mr. Hirschman:

Thank you for taking the time and effort to testify before our Subcommittee on Transportation on May 20, 1986. Your comments on S. 2405, the highway reauthorization bill, are appreciated. I believe the perspectives offered by you and other participants at the hearing are helpful to the decisions we must make on the issues addressed by this bill.

I am interested in obtaining some additional information concerning the testimony you presented at the hearing. Therefore I would appreciate your answer to the enclosed question. Because of the need to publish the hearing record as quickly as possible, I would like to receive your response no later than Monday, June 16, 1986. I realize this is a short turn-around time, but that deadline will permit inclusion of your answers in the hearing record.

Thank you for taking the time to respond to this request, and again for testifying at our hearing.

Sincerely,

Lloyd Bentsen

Lloyd Bentsen
United States Senate

ENCLOSURE

HIGHWAY HEARING QUESTIONS
MAY 20, 1986

QUESTIONS

1. You state in your testimony that there are insufficient numbers of Disadvantaged Business Enterprise firms to meet the 10 percent goal. Will the inclusion of women business enterprises make the 10% Disadvantaged Business Enterprise goal attainable? Will you summarize the impact of including women in the goal from your perspective.

ARTBA

May 22, 1986

The Honorable Steve Symms
Chairman
Subcommittee on Transportation
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the thousands of highway contractors who are members of the American Road and Transportation Builders Association (ARTBA) and the Associated General Contractors of America (AGC), we want to again express our sincere appreciation for being provided the opportunity to present the highway construction industry's views on S.2405, the Federal-Aid Highway Act of 1986.

We wish, in this letter, to reemphasize a major point raised in both our testimonies -- and a point on which both organizations are in complete agreement. The Disadvantaged Business Enterprise (DBE) Program is little more than a counterproductive and costly exercise in government-mandated discrimination which is causing great harm to the construction industry and the competitive bid process. The time has come for its elimination. Accordingly, AGC and ARTBA pledge their total support for the amendment which you have stated you intend to offer, during committee markup, to eliminate the DBE Program.

Moreover, we commend and thank you for having the courage to look beyond the rhetoric which surrounds the DBE Program, and to "tell it like it is" on this issue which is of such great concern to our industry.

Sincerely,

R.E. Hirschman
Robert E. Hirschman
Immediate Past Chairman
American Road and Transportation
Builders Association

Jim Supica
James W. Supica
Vice President
Associated General Contractors
of America

cc: Members, Senate Committee on Environment and Public Works

STATEMENT

ON

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM

Presented

Subcommittee on Environment and Public Works

United States Senate

by Karen L. Stachokis
Employee of Finer Lines, Inc.
Pottstown, PA

Second Session
99th Congress

Tuesday May 20, 1986

Mr. Chairman and members of the Subcommittee, I am Karen L. Stachokis an employee of Finer Lines Inc. a non-minority specialty subcontractors involved in the Highway and Bridge Construction Industry.

I am here today representing my fellow employees thruout the country who are employed in this industry, and who have signed a petition for the elimination of the DBE program as imposed by the Surface Transportation Assistance Act of 1982.

As employees of non-minority firms, we feel we are being discriminated against by Sec. 105(f) of the Surface Transportation Assistance Act of 1982 and the proposed Sec. 130 of the Federal Aid Highway Act of 1986. Jobs are being lost & opportunity for advancement is diminishing due to this imposed quota system.

The people of the United States are given by our constitution the right to grow and prosper and to become productive citizens, now it appears that our group of employees is losing that right with a mandatory quota system.

Employees have pride in their companies but are becoming discourged because the competitive bidding process, which has been the basis of contract award in this industry, is being torn down by this DBE quota system. This hard work and loss of opportunity is very demoralizing. Have you any idea what it is like to keep trying to be more competitive, then told you are low bid but can not be awarded the contract due to the quota system that is in place? Construction firms and their employees are learning the answer to this question every day.

If non-minority firms cannot compete equally with other firms our jobs are in jeopardy, our livelihoods may be lost and employees are canidates for the welfare line.

Construction workers are a proud & hard working group. Our only desire is to provide for our families and improve our status in society. These desires can not be realized unless all the industry has equal employee opportunity. This equal employee opportunity can only be achieved by total abolishment of the DBE requirements from all Federal Aid Highway Programs.

**NATIONAL
ASSOCIATION
of
COUNTIES**

*440 First St. NW, Washington, DC 20001
202/393-6226*

STATEMENT

OF

ROBERT FOGEL

LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF COUNTIES

ON

S. 2405

THE FEDERAL-AID HIGHWAY ACT OF 1986

BEFORE THE

SENATE TRANSPORTATION SUBCOMMITTEE

OF THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

TUESDAY MAY 20, 1986

MR. CHAIRMAN, I AM ROBERT FOGEL, LEGISLATIVE REPRESENTATIVE OF THE NATIONAL ASSOCIATION OF COUNTIES (NACo)* AND COORDINATOR OF NACo'S TRANSPORTATION STEERING COMMITTEE. I APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE THE TRANSPORTATION SUBCOMMITTEE ON S. 2405, THE FEDERAL-AID HIGHWAY ACT OF 1986.

I WANT TO COMMEND YOU AND SENATORS STAFFORD, BURDICK AND BENTSEN FOR INTRODUCING LEGILSATION TO EXTEND THE FEDERAL AID HIGHWAY PROGRAM FOR ANOTHER FOUR YEARS. THERE ARE FEW PROGRAMS WHICH ARE MORE IMPORTANT TO COUNTY GOVERNMENTS THAN THIS PROGRAM. NACo IS PLEASED THAT THE BASIC INTERGOVERNMENTAL PARTNERSHIP REMAINS ESSENTIALLY IN PLACE. WHILE WE RECOGNIZE THAT MEMBERS OF THIS SUBCOMMITTEE ARE CONCERNED ABOUT COMPLETING THE FINAL 3 PERCENT OF THE INTERSTATE SYSTEM, NACo WOULD LIKE TO MAKE SEVERAL OBSERVATIONS ABOUT OTHER PARTS OF THE FEDERAL HIGHWAY SYSTEM WHICH ARE OF IMPORTANCE TO US.

COUNTIES ARE PRIMARILY INTERESTED IN THE URBAN (FAUS) AND SECONDARY (FAS) ROAD PROGRAMS AND THE ON-AND-OFF SYSTEM BRIDGE PROGRAM. THE BILL THE SUBCOMMITTEE IS CONSIDERING CUTS THE SECONDARY AND URBAN PROGRAMS $50 MILLION EACH AND CUTS THE BRIDGE PROGRAM BY $550 MILLION. LET ME SIMPLY SAY THAT WHILE THE CUTS IN THE SECONDARY AND URBAN PROGRAM APPEAR SOMEWHAT SMALL, ONE NEEDS TO VIEW THESE LEVELS HISTORICALLY AND IN TERMS OF THE 1982 HIGHWAY ACT. NACo SUPPORTED THAT LEGISLATION AND SUPPORTED

***THE NATIONAL ASSOCIATION OF COUNTIES IS THE ONLY NATIONAL ORGANIZATION REPRESENTING COUNTY GOVERNMENT IN THE UNITED STATES. THROUGH ITS MEMBERSHIP, URBAN, SUBURBAN AND RURAL COUNTIES JOIN TOGETHER TO BUILD EFFECTIVE, RESPONSIVE COUNTY GOVERNMENT. THE GOALS OF THE ORGANIZATION ARE TO: IMPROVE COUNTY GOVERNMENT; SERVE AS THE NATIONAL SPOKESMAN FOR COUNTY GOVERNMENT; TO ACT AS A LIAISON BETWEEN THE NATION'S COUNTIES AND OTHER LEVELS OF GOVERNMENT; ACHIEVE PUBLIC UNDERSTANDING OF THE ROLE OF COUNTIES IN THE FEDERAL-AID SYSTEM.**

THE 4¢ INCREASE IN THE GAS TAX FOR HIGHWAYS, EVEN THOUGH THERE WAS NO INCREASE IN FUNDING FOR THE URBAN PROGRAM AND A VERY SMALL INCREASE FOR THE SECONDARY PROGRAM. THIS IS IN CONTRAST WITH THE INTERSTATE 4-R PROGRAM WHICH IS NOW FUNDED AT FOUR TIMES WHAT IT WAS IN 1982 AND THE PRIMARY PROGRAM WHICH IS 60% HIGHER THAN IN 1982. THE CHANGES IN AUTHORIZATION LEVELS IN S.2405 WILL PUT THE SECONDARY PROGRAM AT ITS 1981 LEVEL AND THE URBAN PROGRAM AT THE PRE-1978 LEVEL. COUNTIES' HIGHWAY AND ROAD NEEDS ARE SUBSTANTIAL. AS SENATOR SYMMS POINTED OUT WHEN HE INTRODUCED S. 2405 ON MAY 6, OVER $6 BILLION PER YEAR IS NEEDED TO MAINTAIN EXISTING CONDITIONS ON THE URBAN AND SECONDARY SYSTEMS.

THE BILL REDUCES FUNDING FOR THE BRIDGE PROGRAM TO $1.6 BILLION, THE 1983 LEVEL. NACo HAS BEEN PLEASED BY THIS SUBCOMMITTEE'S CONCERN ABOUT BRIDGES AND RECOGNITION THAT OFF SYSTEM BRIDGES NEED TO BE INCLUDED IN THAT PROGRAM AND BELIEVE WE NEED A SOMEWHAT HIGHER LEVEL OF FUNDING THAN IN THE BILL IF COUNTIES ARE TO MAKE A DENT IN $21.1 BILLION INVESTMENT WHICH THE FEDERAL HIGHWAY ADMINISTRATION (F.H.W.A.) ESTIMATES WILL BE REQUIRED FOR OFF-SYSTEM BRIDGES BY THE YEAR 2000.

THE ABILITY OF LOCAL GOVERNMENT TO RAISE TAXES FURTHER TO MEET THESE NEEDS IS OFTEN CONSTRAINED BY STATE LAWS; BY THE UNPOPULARITY OF THE PROPERTY TAX; AND BY THE REDUCTION OR ELIMATION OF FEDERAL PROGRAMS, SUCH AS GENERAL REVENUE SHARING WHICH IS FREQUENTLY USED FOR LOCAL ROAD CONSTRUCTION AND MAINTENANCE.COUNTIES WILL PAY THERE SHARE OF THE SECONDARY AND URBAN SYSTEM BUT NEED THE FEDERAL GOVERNMENT'S HELP IN MAINTAINING THIS PART OF THE INFRASTRUCTURE.

ONE ISSUE THE CONGRESS NEEDS TO ADDRESS IS WHAT TO DO WITH THE $9 BILLION BALANCE IN THE HIGHWAY ACCOUNT OF THE TRUST FUND. SPENDING SOME OF THESE FUNDS FOR THE FAS, FAUS, AND BRIDGE PROGRAM WOULD CERTAINLY HELP COUNTIES WITH THEIR INFRASTRUCTURE NEEDS. WE URGE THE SUBCOMMITTEE TO CONSIDER THE ISSUE WHEN IT BEGINS MARKUP AND WE APPLAUD SENATOR SYMM'S PRONOUNCEMENT THAT HE WILL OFFER AN AMENDMENT TO ADDRESS THE MATTER.

WE HAVE SOME SERIOUS RESERVATION ABOUT SECTION 137 OF THE BILL, THE COMBINED ROAD/PLAN DEMONSTRATION PROGRAM. IT IS LIKELY THAT MANY OF OUR MEMBERS COULD LOSE FUNDING FOR HIGHWAYS IN THEIR COUNTIES IF THE STATE IS GIVEN ABSOLUTE CONTROL OVER HOW THE BLOCK GRANTS WILL BE SPENT. UNDER THE PRESENT SYSTEM, AT LEAST URBAN AREAS OVER 200,000 RECEIVE A PASS-THROUGH OF FAUS FUNDS. AT A MINUMUM, WE WOULD URGE THAT THIS PASS-THROUGH BE RETAINED IN THE DEMONSTRATION PROGRAM OR THAT A "HOLD HARMLESS" PROVISION BE INCLUDED IN THE BILL THAT WOULD GUARANTEE COUNTIES NO LESS MONEY UNDER THE DEMONSTRATION PROGRAM THAN THEY ARE CURRENTLY RECEIVING.

NACo CONTINUES TO HEAR ABOUT PROBLEMS THAT COUNTIES ENCOUNTER IN RECEIVING A FAIR AND EQUITABLE SHARE OF FAS MONEY. ACCORDING TO THE FEDERAL HIGHWAY ADMINISTRATION ONLY SEVEN STATES MAKE AVAILABLE OVER 50% OF FAS FUNDS TO COUNTIES; 20 MAKE AVAILABLE 50% OF FAS FUNDS; AND OVER 23 STATES MAKE NO FAS FUNDS AVAILABLE TO COUNTIES (SEE ATTACHED CHART). WE DO NOT TAKE ISSUE WITH THOSE STATES, LIKE VERMONT, WHICH HAVE FULL RESPONSIBILITY FOR ROADS ON THE FAS SYSTEM. WHAT WE WOULD LIKE TO SEE IN THE BILL

IS A PROVISION THAT REQUIRES STATES TO DEVELOP A SUB-APPORTIONMENT DISTRIBUTION SYSTEM THAT TREATS COUNTIES IN A FAIR AND EQUITABLE MANNER. ONE APPROACH WOULD BE THAT COUNTIES SHOULD RECEIVE AT LEAST THE PERCENTAGE OF FAS FUNDS WHICH REPRESENT THEIR SHARE OF THE RESPONSIBILITY FOR THE FAS SYSTEM IN A PARTICULAR STATE, AND NO LESS THAT A COUNTY CURRENTLY RECEIVES. THERE NEEDS TO BE SOME FEDERAL MONITORING OVER HOW THE STATES DISTRIBUTE FEDERAL HIGHWAY MONEY TO LOCAL GOVERNMENTS. AT THE PRESENT TIME I AM NOT EVEN SURE IF FHWA KNOWS HOW FAS SUBAPPORTIONMENTS ON DISTRIBUTIONS ARE MADE IN EACH STATE. WE THINK THAT AT A MINIMUM, THE SECRETARY OF TRANSPORTATION SHOULD REVIEW AND APPROVE EACH STATE'S SYSTEM TO ENSURE FAIR AND EQUITABLE TREATMENT OF LOCAL GOVERNMENT. WE ALSO WANT TO EXPRESS OUR CONCERN ABOUT THE SECTION OF THE BILL WHICH ALLOWS FOR UP TO 50% OF A STATE'S FAUS AND FAS APPORTIONMENT TO TRANSFERRED BETWEEN THE TWO PROGRAMS. THIS ALLOWS STATES FURTHER AUTHORITY IN FUNDING DECISIONS FOR PROGRAMS WHICH ARE SUPPOSED TO BE AVAILABLE PRIMARILY TO LOCAL GOVERNMENTS.

MY FINAL POINT IS TO STATE NACo'S OPPOSITION TO THE MASS TRANSIT MINIMUM ALLOCATION SECTION OF THE BILL. THE $1.9 BILLION THAT THE CONGRESSIONAL BUDGET OFFICE ESTIMATES MAY BE COLLECTED FROM MASS TRANSIT'S SHARE OF THE GAS TAX MUST BE DEDICATED TO MASS TRANSIT. SOME OF IT SHOULD GO OUT ON A FORMULA GRANT BASIS TO ENSURE THAT STATES GET BACK A PORTION OF WHAT THEY CONTRIBUTED, BUT IT SHOULD NOT BE GIVEN BACK ON A MINIMUM ALLOCATION SYSTEM NOR SHOULD IT BE ELIGIBLE FOR USE ON HIGHWAYS. THE 8¢ GAS TAX

DEDICATED TO HIGHWAY GENERATES A SUBSTANTIAL AMOUNT OF REVENUE AND THE REAL PROBLEM IS THAT ALL THIS MONEY IS NOT BEING FULLY DISTRIBUTED TO MEET THE NEEDS OF THE LOCAL GOVERNMENTS AND STATES.

THIS COMPLETES MY TESTIMONY. I THANK THE MEMBERS OF THIS SUBCOMMITTEE AND WOULD BE PLEASED TO ANSWER ANY QUESTIONS THE MEMBERS MAY HAVE.

PERCENT OF FEDERAL - AID SECONDARY (FAS) FUNDS SUB-APPORTIONED TO COUNTIES

STATE	PERCENTAGE OF SUBAPPORTIONED FUNDS
Connecticut	0
Maine	0
Massachsetts	0
New Hampshire	0
New Jersey	50
New York	50
Rhode Island	0
Vermont	0
Puerto Rico	0
Delaware	0
Maryland	50
Pennsylvania	0
Virginia	0
West Virginia	0
Dist. of Columbia	0
Alabama	50
Florida	50
Georgia	0
Kentucky	50
Mississippi	50
North Carolina	0
South Carolina	50
Tennesse	0
Illinois	85
Indiana	50
Michigan	50
Minnesota	65
Ohio	50
Wisconsin	50
Arkansas	50
Louisiana	0
New Mexico	0
Oklahoma	50
Texas	0
Iowa	100
Kansas	80
Missouri	0
Nebraska	50
Colorado	0
Montana	0
North Dakota	75
South Dakota	50
Utah	50
Wyoming	50
Arizona	50
California	98.5
Hawaii	0
Nevada	0
Alaska	0
Idaho	50
Oregon	50
Washington	98.5

SUMMARY:

- 23 States have responsibility for all FAS routes and funding
- 20 States make available 50% of FAS funds to counties
- 7 States make available over 50% of FAS funds to counties

UNITED STATES CONFERENCE OF MAYORS
1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330

STATEMENT OF

THE HONORABLE ROSS SANDLER
COMMISSIONER OF TRANSPORTATION
CITY OF NEW YORK

on behalf of

THE UNITED STATES CONFERENCE OF MAYORS

on

THE FEDERAL AID HIGHWAY PROGRAM AND THE CITIES

before the

SUBCOMMITTEE ON TRANSPORTATION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

May 20, 1986

I am Ross Sandler, Commissioner of the New York City Department of Transportation. Thank you for the opportunity to present our views concerning the re-authorization of the Federal-aid highway program (S.2405).

I will be speaking on behalf of the City of New York. In regard to the national issue of funding Interstate substitute projects, I will be speaking on behalf of the City and the United States Conference of Mayors.

My remarks will address the Committee's proposals concerning the Federal Aid Urban Systems (FAUS), Highway Bridge Rehabilitation and Replacement (HBRR) and Interstate substitution programs. The re-authorization legislation proposed by the Committee would continue funding at reduced levels over the next four years for these programs. The FAUS program would be authorized at $750 million annually, 6 percent lower than the 1986 authorization; the HBRR program would be authorized at $1.5 billion, 26 percent lower than the current level; and the highway portion of the Interstate substitute program would be authorized at $650 million annually, 10 percent lower than the current authorization. Each of these programs is vital to the reconstruction of roads and bridges in the nation's cities. Failure to continue or increase funding levels for these programs would be detrimental to the nation's aging transportation network.

Allow me first to commend Senator Symms and the committee on many aspects of the legislation which we feel will improve the Federal highway program. However, I must add that the authorization levels proposed for certain of the programs are of great concern to us.

Section 103(e)(4)(B) would make highway construction projects on any public road eligible as highway substitution projects. Present legislation restricts eligibility to projects on the approved Federal-aid Highway System. We strongly support this greater flexibility, which will enable New York and other cities receiving Interstate substitute funds to utilize these funds more cost-effectively.

For example, this provision would enable us to perform certain projects much more efficiently by having contractors carry out "area projects," in the form of a single contract involving work on streets some of which are on the Federal-aid system, while others are not. Such "area projects" enable the work to be carried out at lower cost and with great reductions in both engineering and administrative costs.

Section 103(e)(4)(P) would direct the Secretary to reserve in a State's account of Interstate substitute funds an amount equal to that expended on right-of-way for a withdrawn route or segment of the Interstate where the right-of-way has not been disposed of. New York is affected by this provision, since a payment for the Westway right-of-way has already been made, and a number of alternative plans for the use of this right-of-way are being studied. We do not feel that there is any need to change the existing process for dealing with payments for Interstate rights-of-way. However, if a provision concerning payments for rights-of-way is to be enacted, I urge that it be made explicit in the legislation that States shall be permitted to draw down substitute funds without delay so long as an amount equal to the right-of-way payment remains in a State's trade-in account.

Section 120 would provide that the net income a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under Title 23 shall be used for projects under chapter 1 of title 23 - namely, for Federal-aid highway projects. I would like to suggest to the Committee that this provision be amended to provide more flexibility, by also making mass transit projects eligible for such funding. To permit this, the words "or under the Urban Mass Transportation Act of 1964" could be added at the end of Section 120. I believe that such an amendment would be consistent with the intention expressed both by Congress and the Administration that States and localities should be able to spend their funds on whatever projects are most cost-effective in a particular locality, without any apriori discrimination in favor of highways or mass transit. It would also be in keeping with the "privatization" initiatives of the Urban Mass Transportation Administration, seeking new funding sources for mass transit to reduce dependence on general-revenue tax dollars.

The Federal-aid Urban System (FAUS) would be provided authorizations of $750 million for each fiscal year 1987 through 1990. FAUS funds are exceptionally valuable to New York and to other cities because of the flexibility which permits them to be spent on local streets, bridge repairs and mass transit facilities. These include many of our most cost-effective projects. The level of FAUS authorizations was not increased when the Federal gas tax was raised by 50 percent in 1982 and funding of other major Federal highway programs was increased proportionately. Apparently certain States have not spent their full FAUS apportionments, in contrast to other States whose FAUS apportionemts do not cover their needs. I would recommend a provision to allow re-allocation of funds from those States which do not spend their full FAUS allotments to those States which can use the money effectively. In addition I urge that FAUS authorizations not be reduced, but increased in parallel with other Federal-aid highway programs.

The authorizations provided in the proposed legislation would represent reductions in funding for critical infrastructure work involving bridge rehabilitation and street reconstruction. Failure to continue or increase current funding levels would result in unacceptable delays in upgrading the nation's aging infrastructure.

The bridge replacement and rehabilitation program under section 144 of title 23 will authorize $1.5 billion per year from 1987 through 1990. This amount represents a decrease from previous years' appropriations which would delay the upgrading of many of the nation's deteriorating bridges. In New York City alone there are 411 bridges in poor or fair condition, requiring rehabilitation made possible only through continued funding support by the Federal government.

I would now like to turn to the important issue of Interstate Substitute funding. On this issue I speak both for New York and for the United States Conference of Mayors.

One of the more successful innovations in the federal-local partnership has been the Interstate Transfer program -- the withdrawal of nonessential segments of the interstate highway system with substitution of other highway or transit projects of an equivalent value. It has permitted planning and development changes which have occurred in urban areas since the initial development of the interstate map to be accommodated without the loss of transportation investment, enabling cities to meet transportation needs without building uneeded interstate highway segments. Since 1973, some 32 trade-ins have been made in 21 states accounting for $8.8 billion.

The United States Conference of Mayors strongly urges that the authorization level for Interstate substitute highway projects be increased to enable all trade-ins to be completed as close as possible to the 1990 completion date for the Interstate system. A higher level of annual authorization is needed because of the heavy volume of trade-ins which have taken place since 1982.

When the Surface Transportation Assistance Act of 1982 was enacted, authorization levels for Interstate substitute projects were provided which gave a reasonable expectation that all three Interstate programs (Interstate construction, Interstate substitute highway projects and Interstate substitute mass transit projects) could be completed by 1990. The 1982 Act provided the following authorization levels for substitute highway projects:

FY 1984	$700 million
FY 1985	$700 million
FY 1986	$725 million

In September 1983 the estimated cost to complete of Interstate substitute highway projects was $5.4 billion (Federal cost only). If one assumed that $725 million annually were provided after 1986, all but $400 million of substitute projects would have been funded by FY 1990 and the program would have been completed in 1991.

For mass transit substitute projects, the 1982 Act provided the following authorizations:

FY 1983	$365 million
FY 1984	$380 million
FY 1985	$390 million
FY 1986	$400 million

In September 1983 the estimated cost to complete of Interstate substitute mass transit projects (Federal cost only) was $1.46 billion. The authorizations of the 1982 Surface Transportation Assistance Act added to appropriations prior to that date would have sufficed to fund all but $290 million of this amount, making it reasonable to expect that this program could have been completed well before 1990.

In September 1985 the City of New York and the State of New York decided to trade in Westway, the proposed Interstate highway project on the West Side of Manhattan. The substitute program, approved by the US Secretary of Transportation, consisted of $345 million of mass transit projects and $1.38 billion of substitute highway projects, for a total of $1.725 billion.

New York's action in trading in Westway had national consequences. Prior to the Westway trade-in (as of September 1985) the estimated cost to complete all Interstate substitute highway and mass transit projects throughout the United States totalled $4.9 billion. The trade-in of Westway increased this amount to $6.625 billion, an increase of 35 percent. The backlog of substitute mass transit projects increased from $917.5 million to $1,262.5 million; the backlog of substitute highway projects increased from $3,983.4 million to $5,363.4 million. But I urge you to keep in mind that while the trade-in backlog increased, the estimated cost to complete of the Interstate highway system was decreased by $1.725 billion.

The decision not to construct Westway has reduced the need for Interstate construction funds by approximately $300 million annually. Accordingly, this amount can be subtracted from the Interstate construction authorizations and should be added to the Interstate substitute authorizations. Adding $300 million to the approximately $700 million authorized annually by the 1982 Act would give $1.0 billion annually. This level of authorizations would result in completion of the Interstate substitute highway program in FY 1992.

Congress has repeatedly emphasized its commitment to completion of the Interstate system by 1990. This commitment is reiterated in the introduction of the present bill, S.2405. However, the authorization levels for Interstate substitute highway projects contained in S.2405 are insufficient to achieve this goal with respect to Interstate substitute projects. The authorizations of $650 million for each of the fiscal years 1987, 1988, 1989 and 1990 would leave more than half of the $5,363.4 million backlog of substitute projects unfunded at the end of FY 1990, and continuation of this level of funding would delay the completion of the Interstate substitute highway program until FY 1996.

The United States Conference of Mayors and the City of New York recommend that a commitment should be made to provide all Interstate transfer highway and transit funding for substitute projects by FY 1991, the expected end of the Interstate construction period. This would require an authorization level of $1.1 billion annually for Interstate substitute highway projects for FY 1987 through FY 1991. We urge the Committee to amend S.2405 to provide such an authorization.

In the absence of any increase in Interstate substitute authorizations, every State and city with Interstate substitute projects will be affected negatively. Since the fall of 1985 there has been an increase of more than one third in the program value of substitute projects. This requires a proportional increase in funding levels to keep pace.

Finally, we believe that Interstate substitute projects should be covered by a construction-cost escalator to allow for inflation. The escalator would be especially important if some substitute projects remain unfunded after FY 1990.

I thank you for this opportunity to present our views.

-END-

PSM CONSULTANTS
Joann Payne

Testimony of
The Association of Business and Professional
Women in Construction
and
Women Owned Companies
Presented to the
Sub-committee on Transportation
of the
Committee on Environment and Public Works
United States Senate
May 20, 1986

My name is Joann Payne and I represent the Association of Business and Professional Women in Construction and several other women owned companies throughout the United States. My women would like to thank the members of the Transportation Sub-committee and the staff of the Environment and Public Works for the political courage to include women in the Disadvantage Business Enterprise Program. We applaud your courage and thank you from the bottom of our hearts.

My women support Section 130 (a) and (b) of the Federal Aid Highway Act of 1986 which states women are to be presumed to be disadvantage for the Act.

Section 105(f) of the Surface Transportation Assistance Act of 1982 authorized ten percentum (10%) to go to small business concerns owned and controlled by socially and economically disadvantaged individuals. Women owned companies were left out of the program because the Small Business Act (15 U.S.C. Section 687) does not presume women to be disadvantage. However, in the highway construction industry and according to the Department of Commerce statistics on women, nothing is further from the truth. We will not testify to the pros or cons of the Disadvantage Business Enterprise Program, but to merely state what is good for the goose (minorities) is good for the gander (women). We ask no more or less of Congress.

There is no doubt that Congress' mandate of a 10% goal for DEB's have enhanced the growth and development of the program. It is equally true that Congress' mandate has prohibited the growth and development of the WBE Program.

Let us look at the facts:

1. In 1982 before the enactment of section 105(f), WBE's contracts totalled $237.6 million with a national average of 2.5%
2. Approximately 2,000 women owned businesses participated.
3. Before the enactment of section 105(f), the total contracts for MBE's were $415 million with a national average of 5%.
4. In 1985, three years after the enactment of the DBE Program, the numbers for the WBE companies have hardly changed even though 50% more money has been pumped into the highway system. The WBE total contracts were $296 million with a national average of 2.5%. Approximately 2,000 women owned businesses are still participating.
5. In 1985, the DBE Program had a total of $1.5 billion and a national average of 13%. In 1985-86 there are approximately 20,000 DBE firms that are certified throughout the United States. In 1982 there was less than 7,000 MBE companies.
6. In 1985, the difference in the programs was 10.5%.
7. Section 105(f) has had an adverse impact on the WBE Program. There has been "0" growth of WBE companies because the DBE Program has basically eliminated women from the competitive market place.

All we ask is that Congress be fair to all segments that have been proven to be historically economically and socially disadvantage.

The issue before Congress is that of discrimination against one segment of the disadvantage. If Congress believes in the DBE Program and re-authorizes its existence, then women should be included within the present 10% goal. If Congress chooses to ignore the facts of discrimination and in the fall a bill is signed by the President with the DBE Program intact, but without the inclusion of women, Congress will have dealt the women in this country a great blow of injustice and discrimination.

We realize the WBE issue is very difficult for Congress because of the possible political ramifications from the minority segment. They are concerned about sharing their 10%; however, minorities have felt the pain and frustration of discrimination and they surely realize it is not the responsibility of Congress to protect their 10%. That responsibility lies with the minorities and women who will compete in the free market place.

Another part of the WBE issue that clouds the facts is the proposed problem of fronts. There has never been any proof that it is easier to front a WBE company or that there are more women fronts than minority fronts.

The responsibility of administering the DBE Program lies with the states. The Uniform Certification Program located in Section 130(d) of the Federal Aid Highway Act of 1986 is a positive step towards directing the states in how to carry out their responsibility.

At the present time both WBE/DBE Programs are being administrated together. In most states they have the same pre-qualification and certification procedures. Most lists that are distributed by the states have the DBE/WBE Companies listed together in alphabetical order. So administratively there will not be any extra paper work or cost to the taxpayers.

Senators by including women to Section 130 of the Federal Aid Highway Act of 1986 you have done what is morally right and you have moved one step further in helping solve many of the problems that plague the prime contractors and the non-minorities who have been affected by the DBE/WBE Programs.

Again thank you for your courage and belief in our moral system of justice!

STATEMENT BY

THOMAS A. CALLAGHAN, JR.
ALLIANCE FOR SIMPLE, EQUITABLE AND RATIONAL TRUCK TAXATION

FOR HEARINGS ON

THE EXTENSION OF THE FEDERAL AID HIGHWAY PROGRAM

BEFORE THE
TRANSPORTATION SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

MAY 20, 1986

Thomas A. Callaghan, Jr.
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The Alliance for Simple, Equitable and Rational Truck Taxation (ASERTT) is an organization of trucking companies, independent truckers, truck leasing companies and suppliers to the trucking industry who have joined together to work for a more sensible system of motor carrier taxation and highway finance. We welcome the opportunity to participate in these hearings on the extension of the Federal-aid highway program.

ASERTT testified before this subcommittee on July 11, 1985 in Washington and on September 28, 1985 in Coeur d'Alene, Idaho. Essentially, our message to the subcommittee was that our "user pay" system of highway finance had lost rationality and integrity.

We pointed out to the subcommittee how full paying highway users, like interstate trucking companies, pay for their own share of highway use plus:

-- The share of those who are exempted from some, or all, highway taxes.

-- Enough to be diverted to mass transit.

-- Enough to be the financial underwriter of social policy initiatives like the Disadvantaged Business Enterprise Program, Buy America and the Davis-Bacon Act.

We asked the subcommittee to consider the effect a continuation of these policies would have on longhaul trucking companies locked in competition with a railroad industry, many members of which have been the recipient of general revenue subsidies.

We would like to use this opportunity to focus our attention on the bill before the subcommittee, S.2404, The Federal Aid Highway Act of 1986.

First, with regard to funding, we support the position of Senator Symms that there should be an increase in highway funding and a reduction in the cash balance in the Highway Trust Fund over the next four years. Highway taxes have been paid into the Highway Trust Fund to be used for highway maintenance and repair. The money should be used for those purposes.

Second, we support elimination of the Disadvantaged Business Enterprise Program. While we recognize the need to improve economic opportunities for disadvantaged individuals, we feel the financial responsibilty for programs in this area should be borne by all Americans, not just highway users.

Third, we support raising the threshold on which the Davis-Bacon Act applies to the Federal Aid Highway Program. The Federal Highway Administration has estimated that the Davis-Bacon Act imposes up to $568 million per year in excess costs on highway users. Commercial motor vehicle operators simply cannot afford to pay highway taxes driven by inflated wage rates.

Fourth, we support repeal of the Buy America Act. Highway materials should be purchased from sources that make the most business sense.

Fifth, with regard to the Strategic Highway Research Program, we would urge that the committee direct that some of the $150 million in research funds that are proposed to be drawn down from the Highway

Trust Fund for long term research be used to investigate the trucking industry's concerns with the Federal Highway Cost Allocation Study. Additionally, we would urge that some of those funds be used for research on the value of the Federal Aid Highway System to the country as a whole and to our national defense.

CONCLUSION

As Congress come to grips with tax reform and the 1987 budget, it is highly likely that there will be a call to increase the fuel tax in order to reduce the deficit. The proposals that have surfaced in this area would tax only the fuel consumed by highway users.

In view of the distinct possibility that highway users will be called upon, this year, for special taxes in the name of deficit reduction, we believe that it is imperative that all necessary steps be taken to rid the highway program of cost expanding policies and thereby ensure that highway users receive a dollar in highway for a dollar in tax.

AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION, INC.
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STATEMENT OF THE

AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION

to the

TRANSPORTATION SUBCOMMITTEE

OF THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

Regarding Senate Bill 2405

The Federal-Aid Highway Act of 1986

Presented May 20, 1986

by

Jeff Roehm

ATSSA President

Mr. Chairman,

Mr. Chairman and members of the subcommittee. I am Jeff Roehm, a specialty contractor and President of the American Traffic Safety Services Association. Thank you for inviting me to appear before you this morning to present testimony on the Federal-Aid Highway Act of 1986, S.2405. Because we have testified in detail in the past, we would like to respond directly to the proposed language of section 130 which amends section 105(f) of the Surface Transportation Assistance Act of 1982 - the Disadvantaged Business Enterprise program - and comment briefly on the critical problem that prison industries present to our industry.

Disadvantaged Business Enterprise

Subsequent to our testimony of November 1985 on the DBE program, I received communication from Senator Symms commending ATSSA on the "good middle ground solutions" proposed by our association on the many problems associated with the DBE program. Specifically mentioned were: (1) certification requirements; (2) modification of eligibility standards for small businesses and economically disadvantaged; and (3) proposals to limit the amount of work in each specialty subcontractor area which would count towards the 10% goal. Therefore, it is with some feeling of regret and no small amount of surprise that, with the exception of certification, we see that the Senate Bill contains none of our proposals.

We would like to respond directly to the Senate provisions.

Section 130(b)(2). Definition of "Small Business"

"Small business concern" is redefined to exclude any small business with annual average gross receipts in excess of $10 million. ATSSA members are primarily traffic control specialty subcontractors, and we previously reported that 90% of our members have gross receipts of less than $3 million and 75% have less than $1 million annually. I feel certain that these figures would also apply to other specialty contractors in the areas of landscaping, guardrail erection, pavement marking, etc. We recommend that for purposes of this program, all of the applicable size standards be reduced by one-half. In other words, Highway Construction: from $17.0 to $8.5 million; Special Trades Contractor: from $7 to $3.5 million; and Rental Companies: from $3.5 to $1.75 million. While these figures would still be high, they are certainly much more realistic than the committee's proposed $10 million. This flat $10 million would actually increase the small business size standards for Special Trades and Rental Companies and would further the negative impact already being felt by specialty contractors.

Section 130(b)(3). Women Business Enterprise

ATSSA is in the process of surveying its members on the proposal to include women in the Disadvantaged Business Enterprise Program. We have no conclusive data and will withhold comment on this section.

Subsection (c). Technical Assistance

Allowing amounts expended for technical assistance to be used toward the 10% goal may encourage the mentor/protege concept and ATSSA would favor this approach. However, there should be a clarification on what is meant by technical assistance and who could offer this assistance. If the cost of this assistance can be used to meet 10% of the goal, where will the funding for this be obtained? Does it come from the regular construction funds? Is it 100% federal, 100% state, or some matching ratio?

There is a definite need to train DBE personnel and provide technical assistance, and it is a good idea to count this assistance as part of the 10%

goal. However, the most effective way to provide this assistance is to provide separate 100% federal funding, and we restate our original recommendation that a minimum of $5 million a year be authorized for training and education of DBE key personnel.

Subsection (d). Certification

There are FHWA guidelines already in place for establishing certification for DBE's; however, these guidelines are left open for states to interpret, and the result is a crazy quilt of certification requirements varying from state to state. We strongly favor uniform certification requirements of the type proposed within the Senate Bill. We recommend that a provision requiring the state DOT's to monitor and enforce the program be included so as to avoid the open interpretation that is now occurring in all 50 states.

Subsection (e)(1). Level of Effort

This section requires that a DBE perform only 30% of his own work, not to include the cost of supplies and materials. To see what effect this would have, consider the following example where a DBE is awarded a $100,000 dollar contract. Typically, $60,000 would go for materials and supplies, leaving $40,000 for labor. Under the committee proposal the DBE would be required to perform 30% of $40,000 or $12,000. It is our understanding that if this condition is met, the entire $100,000 subcontract counts toward the 10% goal.

This $12,000 (12%) is in most cases no more than the administrative cost. We feel that this provision would encourage DBE's not to perform the work and would perpetuate the brokerage situation. If the purpose of this program is to create bona fide, self-sufficient DBE firms, requiring the DBE to perform only 30% of the work is most counterproductive. If someone else can supply the materials, and someone else can supply 70% of the work, the question arises, how can we require certification and prequalification if we don't require that the DBE perform the work? In our industry, as well as in other specialty subcontractor industries, companies typically do 100% of the work. We recommend that the percentage of work required by the DBE be much higher in order to preserve the integrity of the program.

Subsection (e)(3). Payments from DBE to Prime

Any payments from the DBE to the prime contractor cannot be used to meet the goal unless prior contracting arrangements have been approved by the state. This is a necessary provision and ATSSA agrees with the intent.

Subsection (f). Prime Contracts

In previous testimony we have suggested that specific limits be placed on specialty subcontracting work. The intent of subsection (f) is to create a set-aside program which would require that DBE firms act as prime contractors by contracting directly with the states. It should be noted that because the percentages are so small, the specialty contractor still must carry the burden of this program. Five percent of 10% is 1/2%, an infinitesimal amount for the prime contractor to share. The specialty contractor would still be disproportionately affected by this program except that by 1990 1% of the yearly goal would be contracted to a DBE prime contractor. Essentially, this would merely reduce the goal from 10% to 9% after three years for subcontracts, and the ghettoization of minorities into specialty areas like traffic control, guardrail erection, pavement marking and landscaping would continue to proliferate. This provision does nothing for the specialty subcontractors.

We again recommend that there be a limitation placed on subcontracting work in specialty areas. This is critical to specialty subcontractors who have been unfairly and adversely affected by this program. In order to lessen the impact on the DBE's and simplify the reporting procedures, we suggest a proposal similar to one that has been presented in Utah which would limit work in each of the following categories that counts toward the goal:

(a) Excavacation
(b) Base & subbase
(c) Roadway surface
(d) Structures
(e) Landscaping
(f) Traffic control
(g) Incidental construction

These categories correspond closely with the ones now being used by states to report monthly to the FHWA on Form 1405. We would further recommend that these limitations be phased in over a three-year period - no more than 40% in fiscal year 1987, 25% in fiscal year 1988, and 15% in fiscal year 1989 and all subsequent years.

For purposes of determining the amount to be expended in the current fiscal year in each of these categories, the recipient may use the amount expended in each category in the previous fiscal year plus or minus the anticipated percentage increase or decrease in the total STAA appropriation.

Summary

We have testified before on the problems encountered by our members with this program as it is now being administered. S.2405 has addressed the problem of certification, and we commend the committee for this. However, the impact of 105(f) on the specialty subcontractor remains a major source of concern to the members of the traffic control industry as it does for other specialty contractors. Unless limits can be put on the amount of work in each subcontracting area, as recommended in our response to section (f), then specialty items will continue to be used to fill the 10% goal, and small industries will continue to fill 100% of the requirements.

These small specialty businesses are comprised of taxpaying citizens in all states and their livelihood is being threatened. They have made significant investments in equipment and training to fill a recognized public need, and to disregard these constituents and allow one segment of the highway industry to be unduly impacted, is unfair.

If changes in the program placing specific limits on specialty subcontracting cannot be implemented, then we would recommend that the program be abolished by gradually reducing the goal over four years to 8% the first year, 6% the second, 4% the third, and 2% the fourth. We urge the committee to take positive action to make the program work more fairly or to phase it out completely.

Prison Industries

We have testified in the past on the effect that prison industry expansion has on our industry. There is a provision in House Bill 3129 which limits the use of convict-produced material on Federal-aid highway projects to their already expanded July 1985 levels. We would ask this subcommittee to provide a similar provision in their transportation bill.

Without this provision, the unrestrained expansion of prison industry into the Federal-aid market unfairly threatens an entire segment of the free market private sector.

A little noticed, nondebated insertion into the 1984 Appropriations Act has produced a radical reordering of Federal-aid rules and threatens an industry. An example of what is happening is in the state of North Dakota.

Recently, the North Dakota Prison Industries bid to prime contractors on large Federal-aid jobs in North and South Dakota, and they were awarded subcontracts for supplying the signs. These prison industry bids barely covered the cost of materials on the project with no allowance for labor, shipping, overhead or profit, and of course, they pay no taxes. These prison sign shops are subsidized by tax dollars, resulting in prisoners taking the jobs of taxpaying citizens in these states and in other states. The outcome is that a private sector industry comprised of small businesses is being unfairly affected, and important tax monies in both states are being lost because of the prison industry intrusion into the Federal-aid highway market.

Private sign shops in Minnesota and North and South Dakota, employing over 200 people, also unsuccessfully bid on these jobs but were not able to compete with the subsidized prison industry. A valuable tax base, as well as gainful employment for over 200 law-abiding citizens, is being unfairly lost in these three states because the prison in North Dakota is doing the work and supplying the materials on Federal-aid projects.

As recently as last week we received word that the Iowa State Prison Industries were awarded a large Federal-aid contract in that state. In this state where there is a critical shortage of jobs, prisoners will be supplying the materials on a Federal-aid job, thereby displacing private sector sign manufacturers in the state of Iowa.

Expansion of prison industries on Federal-aid jobs is occurring at ever increasing rates. The adoption of this compromise amendment, which the prison industry directors admit will not affect their present programs, will resolve once and for all the long, unnecessary dispute involving the private sign industry. We ask that you include this provision in the Senate Bill, remove this government created monopoly, and put taxpaying citizens back to work before another small business sector of the free-market economy is destroyed.

We appreciate the opportunity to present our views and hope that the committee recognizes the need for legislation to correct the inequities now existing in the areas that we have outlined.

Statement of

MARATHON PETROLEUM COMPANY

by

JAMES A. WILKINS

Regarding

REPEAL OF GASOHOL TAX EXEMPTION

TITLE V SURFACE TRANSPORTATION REAUTHORIZATION ACT OF 1986

Before The Transportation Subcommittee

OF THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

UNITED STATES SENATE

May 20, 1986

I am James A. Wilkins, Director of Public and Government Affairs, Marathon Petroleum Company. I appreciate this opportunity to be invited before the Subcommittee and express Marathon's support for repealing the tax exemptions given to alcohol fuels. This repeal provision is contained in Title V of the Surface Transportation Reauthorization Act of 1986. I ask that my entire statement be included as part of the report of this proceeding. I will summarize our views in the interest of time.

Marathon engages in the producing, refining, marketing and transportation of petroleum and petroleum products in the United States and abroad. We are owned by United States Steel Corporation.

Marathon markets primarily in six Great Lakes states and in the southeastern region of the country. Over the years a very significant portion of Marathon's gasoline has been sold to independent marketers who resell the product under their own private brand names and to independent dealers, jobbers and distributors who resell the product under the Marathon trademark.

In 1985 we sold about 4 billion gallons of gasoline, and more than 56 percent of our gasoline sales were made to those independent businessmen. That group includes approximately 2,360 Marathon branded outlets in Indiana, Illinois, Kentucky, Ohio, Michigan and Wisconsin which are operated by independent marketers primarily as full-service stations.

The remaining 44 percent of our gasoline in 1985 was sold through a wholly-owned subsidiary engaged in direct retailing under our secondary brand names.

Though we do not blend either ethanol or methanol into our gasoline, we want to make one point very strongly -- Marathon Oil Company is not against alcohol per se. We have no objection to any competitor selling alcohol-blended motor fuel.

We do object, however, to excessive federal and state alcohol subsidies which lower the wholesale cost of "gasohol" 2 to 3 cents (sometimes even 5 cents) below straight gasoline. This forces our independent dealers to compete against government subsidized competition. Since our primary market is in the Midwestern corn belt states with high gasohol subsidies, this issue has a far greater impact on us than the larger, national oil companies.

But we are not alone on this position. Many other oil companies, highway users and contractors, and trucking interests support the repeal of the alcohol fuel tax exemptions.

Since 1979, the federal government has granted a motor fuel tax exemption on gasoline blended with 10% ethanol. The exemption has been increased twice since then and is now 6 cents per gallon. Additionally, twenty-nine states offer similar tax exemptions from 1 to 16 cents per gallon with an average of nearly 3 cents per gallon. These exemptions have depleted nearly $450 million from federal highway dollars and $215 million in-state highway dollars in 1985 -- total $715 million. The National Corn Growers seek one billion bushels of corn used for ethanol by 1990. With the present tax exemptions that would cost $2.25 billion each year. A two-lane highway around the perimeter of the United States could have been resurfaced with the funds spent on ethanol subsidies last year alone. Think of that the next time you hit a pothole.

The Alcohol Fuels Caucus, proponents of these subsidies, estimate that ethanol production has used 150 million bushel of surplus corn and thus saved the Department of Agriculture $500 million in agriculture price support payments; i.e., deficiency payments and storage costs. That is based on a greatly inflated projection on how much ethanol production has increased corn prices. When you consider both federal and state revenue losses, we believe ethanol subsidies represented a net cost of about $350 million last year. Increasing corn prices via ethanol subsidies is nearly twice as expensive as the present support programs. Sure, the farmer wants to be less dependent on federal support. But ethanol subsidies are merely another more expensive means of providing government support.

Using 250 million bushels of grain for ethanol production, no doubt, reduced the Department of Agriculture price support payments. For this reason, if the Congress is intent upon continuing some form of ethanol subsidies, even though the economic logic of ethanol fuels is not sound, at least let the simple logic prevail that the Department of Agriculture should incur the cost -- not the Department of Transportation. To claim agriculture savings while turning a deaf ear to the greater cost from highway funds is no different than your spouse proclaiming how much was saved on groceries by taking the money out of your piggy bank instead of the family checkbook. It makes absolutely no sense to exempt a vehicle from two-thirds of the motor fuel tax simply because it was filled with 10 percent ethanol. It enjoys the same use of our highways.

The timing for switching from a motor fuel tax exemption to a program administered by the Department of Agriculture couldn't be better. Corn prices for the new crop harvested next autumn are expected to be near $2 per bushel with some estimates as low as $1.60 per bushel. These lower corn prices will reduce the production cost of ethanol to nearly the same benefit that the motor fuel tax exemption provided when it was increased to 6 cents per gallon in January 1985. A program administered by the Department of Agriculture could be tailored to work with other agriculture programs to get the most benefit per tax dollar.

You may be concerned that by repealing the exemption, the ethanol industry would be killed and the nation would be placed in even greater vulnerability to another oil shortage. Well, first, the Department of Agriculture has already demonstrated an interest in maintaining the ethanol industry. Just last week, it introduced a program to give ethanol producers a certificate worth one bushel of grain for every 2.5 bushels used to make ethanol. This is worth an equivalent motor fuel tax exemption of 3.8 cents per gallon. The program expires September 30, 1986 when lower corn prices are expected to help the ethanol industry.

Second, ethanol is not displacing foreign crude imports. Instead, it is displacing domestic crude oil production from stripper wells which have become uneconomic to operate at oil prices below $15 per barrel. These wells are being permanently sealed with concrete poured down the hole in order to protect the groundwater. By comparison, it would be far less costly to reopen an ethanol plant than to redrill these wells. Ethanol is displacing this domestic oil at $15 per barrel -- not foreign oil imported at a less cost. Meanwhile federal and state motor fuel subsidies are equivalent to nearly $38 per barrel (Figure 1 and 2).

Times have changed since 1979 when the gasohol exemption was enacted. The exemption has depleted far more from the Highway Trust Fund than ever imagined and we have a world oil surplus forcing us to shut in domestic oil. Our laws should change also. The motor fuel tax exemptions for alcohol fuels should be repealed. If Congress feels some type of ethanol subsidy is needed, shift the burden to the Department of Agriculture.

Thank you for your attention. I have enclosed some background material on this issue for your information.

ETHANOL SUBSIDIES
REBUTTAL TO PROPONENT ARGUMENTS

1. IMPROVES FARM ECONOMY

-- Increases corn price 10¢ per Purdue University.
-- Reduces grain surplus.

-- Reduced government grain support program cost by $129 million in 1982.

Rebuttal

-- Other midwestern university studies conclude corn price increase only 2-6¢/bshl.

-- Corn price would have to exceed $3.03/bshl. (i.e., 40-50¢/bshl. higher) before the farmer would realize additional income, because farmer receives federal aid up to $3.03/bshl.

-- 1985 ethanol production consumed 250 million bshl. of corn -- about 3% of total U.S. corn production.

-- Ethanol subsidies may reduce agriculture support payments, but costs to highway funds far exceed agriculture savings -- net cost to federal and state governments $350 million in 1985. It is about twice as expensive to increase corn prices by ethanol subsidies than through corn price supports.

2. REPLACES LEAD AS OCTANE ENHANCER

-- Raises octanes 3 points.

-- Economical.

-- Compatible -- No performance problems.

Rebuttal

-- Ethanol is the most expensive octane enhancer. It is economical only after federal and state subsidies are added.

-- There are four other ways to improve octanes -- these do not require subsidies.

-- These other methods are also compatible with gasoline.

-- Ethanol does have some drawbacks:

- Mileage penalty 2-3%,
- clogs fuel filter -- after first use in older cars,
- attracts water -- fuel must be kept free of water,
- raises vapor pressure which increases ozone pollutants and driveability problems (rough idling, hesitation, vapor lock)

REBUTTAL TO PROPONENT ARGUMENTS (Continued)

3. A RENEWABLE ALTERNATIVE FUEL

- -- Reduced crude imports 20 million bbl. in 1984.
- -- Reduced trade deficit $210 million in 1984.
- -- It is the only synthetic fuel program in existence.

Rebuttal

- -- Only the gasoline portion of the 20 million bbls. of crude was displaced by ethanol -- roughly equivalent to 10 million bbls. of crude.
- -- 15% of the ethanol used is imported.
- -- Ethanol tax exemptions equal $38 per barrel.
- -- Ethanol will replace domestic crude oil production from stripper wells which will be permanently closed as oil prices remain below $15 per barrel.
- -- Ethanol is uneconomic as an alternative fuel and it is a regional program. Methanol could be national in scope and its economics are brighter.
- -- Even if 100% of gasoline were blended with ethanol, it would replace only 2.5% of our crude oil.

4. ENVIRONMENT

- -- Gasohol significantly reduces hydrocarbon and carbon monoxide tailpipe emissions compared to unleaded.

Rebuttal

- -- The EPA's lead phasedown will significantly reduce tailpipe emissions. Lead content has been reduced 91% and fuel switching which accounts for 15% of leaded sales is likely to stop.
- -- 10% ethanol increases Reid Vapor Pressure (RVP) by 1 psi. Increased RVP causes higher evaporative emissions and more ozone pollution.

5. EMPLOYMENT -- GENERAL ECONOMY

- -- Ethanol production created 19,600 jobs in 1984.
- -- $1.6 billion has been invested in ethanol facilities.

REBUTTAL TO PROPONENT ARGUMENTS (Continued)

Rebuttal

-- Ethanol production transfers jobs from one sector of the economy to another.

-- An Ohio study concludes each $100 million spent on highways supports 2,600 construction and related service and supplier jobs. Ethanol subsidies in 1985 will cost $717 million -- equal to 19,500 jobs. Employment is a wash effect.

-- Conceptionally, the economy cannot be improved by substituting $1.15/gal. ethanol for $.45 gasoline (before tax).

6. COMMITTED TO 1992

-- Investments in ethanol facilities were made based on subsidies continuing until 1992.

Rebuttal

-- The exemption was to establish a fledgling industry -- ethanol now has a 7% U.S. market share -- 14%-34% in the midwest.

-- This tremendous sales growth has greatly increased the cost to $717 million per year -- way above original projections.

-- Gramm-Rudman is forcing a $550 million cut in the highway budget in 1986.

7. OIL COMPANY SUBSIDIES

-- The oil industry has enjoyed oil depletion allowances and intangible drilling cost write-offs to encourage production. The ethanol industry should be allowed the same incentive to get started.

Rebuttal

-- The oil industry is the only industry accessed with a Windfall Profits Tax. The industry paid $76 billion since 1980 -- far exceeding any so-called favorable tax treatment.

-- Studies by the Congressional Joint Committee on Taxation and the API conclude that the petroleum industry pays a higher percentage of income tax than the average among major industries.

-- The fuel ethanol industry is established -- accounting for a 7% U.S. market share.

May 19, 1986

ETHANOL FACT SHEET

	1984	1985	Projected 1986
Ethanol Blend Sales			
U.S. (billion gals)	5.7	7.5	8.3
U.S. Market Share	5.4%	7.3%	8.0%

Market share in corn belt states 14-34%

	1984	1985	Projected 1986
Ethanol Production			
U.S. (million gals)	443	650	750
Imports	125	110	65
TOTAL	568	760	815
% Imports	22%	15%	8%
Domestic operational capacity (million gal)	840	975	1,125

50% of the domestic operational capacity is in Illinois.
80% of the domestic operational capacity is in six corn belt states.

	1984	1985	Projected 1986
Corn Production and Use			
Ethanol production (million bshl)	175	250	275
Total U.S. corn production (million bshl)	7,650	8,750	
Total World corn production (million bshl)	N/A	18,700	
% of U.S. corn used in ethanol	N/A	2.9%	

Average Ohio corn farmer produces 70 acres of corn at 110 bushels/acre = 7,700 bushels of corn.

Cost of Subsidy	
Exemption/Gallon	
States (average)	2.9¢
Federal	6.0¢
TOTAL	8.9¢
Government Outlays ($ million)	
States	269
Federal	448
TOTAL	717

Miscellaneous

Current ethanol price	$1.05 - 1.28/gal
Current corn price	$2.30/bshl

Estimated cost of producing ethanol:

Variable	$ .90 - 1.00/gal
Capital	$ .25/gal-.40/gal
TOTAL	$1.15 - 1.40/gal

1 bushel of corn yields 2.5 gallons of ethanol.

Cost to resurface 1 mile of two lane road = $50,000.
Therefore, over 14,000 miles of roadway could be repaved -- That's more than enough to repave a two lane road around the country -- Seattle to Los Angeles to Miami to Portland, ME and back to Seattle!

May 19, 1986

Federal Excise Tax Exemption

	Current Exemption Cents/Gal.	1985 Sales Millions/Gal.	Market Share	1985 Federal Highway Revenue Loss Millions/Year
U.S.	6¢	7,463	7.3%	$448

State Excise Tax Exemptions
(See Next Page)

	Current Exemption Cents/Gal.	Projected 1985 Sales Millions/Gal.	Market Share	1985 Projected State Highway Revenue Loss Millions/Year
Average	2.9¢	7,463	7.3%	$215

Sales Tax Exemptions

	Current Exemption	Projected 1985 Sales Millions/Gal.	Market Share	1985 Projected State General Revenue Loss Millions/Year
HW	4%	0	0	$ 0
IL	3%	*750	20	34
IN	1%	694	33	12
IN	15¢ producer cr.	NM	NM	8
MS	6%	0	0	0

*Illinois gasohol sales June-December estimated by FHWA

Sub-Total General Revenue Loss $ 54

Grand Total State and Federal Revenue Loss $717

NM - Not Meaningful

GASOHOL FACTS - 1985
State Excise Tax Exemptions

	Current Exemption Cents/Gal.	Projected 1985 Sales Millions/Gal.*	Market Share	1985 Projected State Highway Revenue Loss Millions/Year**
AL	3.0¢	196	10	$ 5.9
AK	0.8¢	0	0	0
AR	4.7 (Jan-June)	10	2	.5
CO	5.0	238	17	11.9
CT	1.0	16	1	.2
FL	2.0	591	11	18.0
ID	4.0	21	4	.8
IA	1.0	436	34	6.5
KS	4.0	282	24	12.6
KY	3.5	556	30	19.5
LA	16.0	124	6	19.8
MD	3.0	1	2	0
MI	1.0 (Jan '86 0¢)	549	12	5.5
MN	4.0	350	25	13.1
MT	50.0 producer cr.	8	3	.5
NC	5.0 (July'85 0¢)	121	1	6.0
NE	3.0	242	32	9.7
NM	11.0	76	13	8.3
NJ	0.8	0	0	0
ND	8.0	37	7	2.9
NV	0.1	1	0	0
OH	2.5	692	15	17.3
SC	6.0	1	0	.0
SD	3.0	52	15	1.8
TN	4.0	365	13	14.6
TX	5.0	429	5	10.9
VA	8.0	350	14	28.0
VT	0.3	0	1	0
WA	2.8	8	1	.2
Sub-Total				$ 214.5

* Per FHWA "Monthly Gasohol Reported By States"
Illinois gasohol sales June-December estimated by FHWA

** Revenue losses were adjusted in states that experienced a mid-year change in the exemption.

May 19, 1986

May 20, 1986

Honorable Robert T. Stafford,
United States Senator,
Chair, Committee on Environment and Public Works
United States Senate
Washington D.C.

Hearing on S. 2405
Everett Dirksen Bldg., Rm. 406

Gard Kealoha,
Trustee,
Chair, Culture/Education Committee
Office of Hawaiian Affairs

Senator Stafford, Honorable Committee Members, ***Aloha Kakou!***

I am Gard Kealoha, Trustee and Chair of the Culture/Education Committee of the Office of Hawaiian Affairs (OHA). OHA is a constitutionally created body politic within the structure of Hawaii's governance. Its mission goal is the betterment of conditions of native Hawaiians. Hence, it advocates for both the social and economic self sufficiency of native Hawaiians in the state of Hawai'i.

OHA is deeply concerned of course, about the transportation needs of all of our state citizens. For that reason it does not take a stand on the matter of the proposed H-3 freeway in so far as the freeway will not, in any way, make constructive use of, destroy or cause any damage to the Luluku Archaeological district that lies directly in the path of the proposed freeway. It was our understanding that the present congressional proposal for the waiver of 4F protections occurred as a result of an opinion reacting to a judicial decision on Ho'omaluhia Park and that the Luluku considerations had not been discussed with our Congressional delegation at that time.

The State Department of Transportation; Lands and Natural Resources and Historic Preservation Office have ***never*** consulted with the Office of Hawaiian Affairs in any meaningful and sequential manner save for one information meeting with our Culture/Education Committee held at the request of the DOT after Senator Matsunaga urged them to do so. Better planning in working together might have provided better solutions. The H-3 planning antedates the creation of OHA. In addition to these puzzlements, we are still unable to comprehend why these responsible state agencies were so glacially slow in nominating the Luluku complex for Historic Preservation considerations.

The DOT contracted the Bishop Museum to conduct a survey of the Luluku complex. That final report is due later this summer. Meanwhile, the recommendations tentatively presented in their progress reports particularly the nomination for separate sites considerations stop glaringly short in including important cultural values and implications. It is another puzzlement when one can assume that archaeologists usually receive degrees in Anthropology. The DOT nominated 17 sites for separate considerations as stated previously. The Keeper of the National Register however, upgraded that nomination to the status of a discontiguous district. We are forced to conclude that the DOT recommendation as essentially flawed and intellectually irresponsible.

While it is known that the Keeper of the National Register is understandably not conversant with native Hawaiian cultural values, practices and historical significances, the Bishop Musuem /DOT report surveyors simply do not have those excuses for ignoring such extremely important factors.

The 1986 Academy Award winner for Best Foreign Film is an entry from Argentina called, "The Official Story." It delineates an appalling estrangement between truth as perceived by people of good will and the obfuscations of government policies that demean the trusting faith of decent citizens.

The film's basic premise: that history is the memory of its people, is simply and profoundly portrayed. This universally understood assertion, that history is the memory of its people, provokes our responsibility at the Office of Hawaiian Affairs to preserve, protect, and enhance the cherished legacies of our own native Hawaiian memory that is so startlingly evident in the treasures of the Luluku Archaeological District.

The DOT/BM survey's project director and staff surveyor hold only Bachelor degrees. We are pleased to attach University of Hawaii Associate Professor of Anthropology Dr. Bion Griffin's excellent assessment on the Luluku complex citing its impressive importance. We are also preparing to send you documents attesting to the Luluku district that are now being written by other distinguished archaeological experts holding doctoral degrees who are also thoroughly familiar with the Hawaiian cultural landscape so that the Congressional Record may be properly informed. The Society for Hawaiian Archaeologists in their peer review process has sustained OHA's insistence that the Luluku complex is of critical native cultural importance. A comment written by UH Hawaiian History Professor Dr. Pauline King, a native Hawaiian scholar is also attached with respect to the unusual request for the waiver of Federal laws.

The Trustees of the Office of Hawaiian Affairs have unanimously voted to prepare for a lawsuit on these matters as a matter of last resort. We are a state agency charged with the monitoring and evaluating of state actions that impact on native Hawaiian concerns.

History, indeed, is the memory of its own people. We urge you good Senators, to not obliterate the heritage of native Hawaiians in their own small islands by allowing the strong protections of federal law as afforded by the 4F requirements to be waived. To do so would blot the integrity of the United States government in failing to honor its native American constituencies threatened with similar actions throughout our other 49 states should the waivers occur.

Luluku is eminently worthy of 4F protection. The Federal Highway Administration must immediately begin Section 106 consultations. Surely, native Hawaiians deserve equal protection of its cultural richness under the law.

The Oahu District Council of the Association of Hawaiian Civic Clubs has unanimously voted to support the efforts of the Office of Hawaiian Affairs in securing 4F protection for the Luluku complex.

Native Hawaiians are simply saying that we can no longer be forced again to sacrifice our history, our memory, our concrete and evident legacies to the tyrannical desires of a majority in our islands who are uninterested and uncaring about the native people who sustained a viable and most superb culture for over 1500 years.

Mahalo for graciously including the Office of Hawaiian Affairs today in your deliberations. Please know that we do very much appreciate the unfailing support of our own Senators Inouye and Matsunaga and Congressmen Akaka and Heftel in our many troubled struggles toward the achievement of justice and equity and the perpetuation of native affirmations that can so enrich and dignify the American Dream.

J. BENNETT JOHNSTON
LOUISIANA

United States Senate
WASHINGTON, DC 20510

June 2, 1986

The Honorable Quentin Burdick
Ranking Minority Member
Subcommittee on Transportation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Quentin:

As you begin to markup legislation to reauthorize the Federal highway program, we would like to remind you of our interest in extending I-49 for 6.7 miles in the Shreveport and Lafayette vicinities.

You will recall that on March 22, 1984,* Bennett testified before your Committee on this matter. At that time he explained that these extensions would alleviate traffic congestion, facilitate the movement of interstate commerce and promote national defense purposes.

In addition, on October 4, 1984, during Senate consideration of the Interstate Cost Estimate (ICE) approval, we engaged in a colloquy with members of the Committee on this matter. You will recall that the House version of the ICE approval contained the necessary authorization language and that the Committee leadership agreed to see that our concerns were addressed in Conference. Unfortunately, however, this matter was not resolved prior to the adjournment of the 98th Congress. Consequently, on January 4, 1985, we sent a letter to the Committee leadership which reaffirmed our interest in these extensions and again asked for your support in correcting these deficiencies in the interstate system.

A copy of all of the above-mentioned materials and further statements were submitted to the Committee for inclusion in the July 1985 hearing record on the reauthorization of the Federal aid highway program.*

We cannot overemphasize the importance of these projects to our State and to the nation. Without these extensions, traffic from the interstate will be dumped into the middle of two of the fastest growing cities in Louisiana, thus causing gridlock, increasing the possibility of traffic related accidents, and interfering with our national defense needs. Our national

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*See Subcommittee on Transportation hearing entitled "The Federal-Aid Highway Program," Part 1, July 1985, pages 579-592.

defense needs are especially important in the Shreveport vicinity where in the late 1950's the Department of Defense requested vertical bridge clearance of 16 feet for all of I-20. The state was able to accommodate the Department with respect to the rural segments of I-20; however, construction had already begun on I-20 in the urban areas of Shreveport. Consequently, this portion of the interstate does not have military clearance.

Vertical bridge clearance was subsequently incorporated into the urban Shreveport portions of I-49 and I-220. However, there is a 3.7 mile gap between these highways. By extending I-49 between I-20 and I-220, continuous vertical bridge clearance will be achieved, thus greatly enhancing our national defense highway needs.

This is especially important given the close proximity of Barksdale Air Force Base to Shreveport/Bossier City. Barksdale A.F.B. is a Strategic Air Command facility and the headquarters for the Eighth United States Air Force. It is the home of the B-52 bombers armed with air launched cruise missiles and the KC-135 tankers which deploy the B-52s. Employment at the base currently exceeds 6,000 people and is growing. Extension of I-49 northward will make the base much more accessible to military facilities north of the city. For example, it will make Barksdale more accessible to the Red River Army Depot and a major army weapons plant, both of which are located close to Texarkansas.

In closing, we would like to stress that we are not asking for a new road to be built. Rather, we merely want to correct two deficiencies that exist in an ongoing project. We appreciate your consideration of our request and hope that the necessary authorizing language will be included in the 1986 reauthorization bill. Please do not hesitate to contact us if you have any questions or require further information.

With kindest personal regards, we are

Sincerely,

Russell B. Long
United States Senator

J. Bennett Johnston
United States Senator

Enclosures

UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

STATEMENT OF

J. AL LATHAM, JR., STAFF DIRECTOR

PRESENTED TO THE

SUBCOMMITTEE ON TRANSPORTATION

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

MAY 20, 1986

I have been asked to present evidence regarding the empirical effects of the STAA minority set-aside program. Much of the evidence that I present, however, also applies to the effects of other set-aside programs. Hence, my testimony has implications not only for the STAA program, but also for minority set-asides generally.

As Staff Director of the United States Commission on Civil Rights, I have recently directed a comprehensive study of set-asides. The Commissioners have taken no final action on that study, and the views expressed here are my own.

My discussion is divided into three parts. First, minority participation in Federal-contracting is examined and discrimination's possible impact is explored. Second, there is an evaluation of the principal economic arguments advanced by set-aside proponents, namely, that set-aside programs encourage the formation and success of minority-owned firms, and that this assistance creates a beneficial ripple-effect, increasing minority employment and improving the economic prospects of nonparticipating minority firms. Finally, criticisms of the administration of set-aside programs are considered, among them, the increased cost of government contracting, the proliferation of sham minority firms, and the displacement of nonminority firms.

From the outset I should state that the growth of minority set-aside programs has been accompanied by little significant scholarship. The best available evidence, however, is sufficient to raise strong doubts about the success of these programs.

Intent of Minority Set-asides

Any assessment of minority set-asides hinges upon one's perception of their objectives. During set-asides' near twenty-year history, proponents have claimed two different goals against which set-asides' success may be judged. Set-asides were first intended to expand minority employment opportunities. More recently, the goal claimed for set-asides focuses upon the more abstract objective of securing for minorities their "fair share" of federal procurement - presumably that percentage which minorities would have obtained in the absence of discrimination. Against either standard, however, the performance of minority set-asides is, at best, questionable. The beneficial employment effect predicted for these programs has not materialized and, though the minority share of procurement has increased, a closer analysis of the "fair share" defense reveals serious flaws.

The Fair Share Argument

The "fair share" defense of minority set-asides maintains that in the absence of discrimination, minority-owned firms would procure 15 to 18 percent of Federal contract dollars. Set-asides' key advocate Rep. Parren Mitchell once explained that:

> In the process to parity, the minority business sector should receive from 15 to 18 percent of the contract receipts, however, in fiscal year 1976 the minority business sector received less than one percent of the Federal contract receipts of the Federal Government. 1/

According to Rep. Mitchell's thesis, the gap between current minority participation in Federal contracting--now roughly 3 percent--and the "ideal" 15 to 18 percent figure results from racial and ethnic discrimination.

Group Differences

What such an analysis fails to take into account is that not all statistical inequities are the result of discrimination. On the contrary, statistical disparities between groups may be the result of completely innocent factors. Obvious factors creating group differences in entrepreneurship are education and training.

Moreover, it appears that various cultural and national traits contribute significantly to differences in entrepreneurship. The fact that Koreans are self-employed at a rate roughly double that of whites casts strong doubt upon the premise that all individuals are equally likely to own a business independent of discrimination.

These differences in group propensities for enterprise pose significant, if not insurmountable, problems for those who seek

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1/ 123 Cong. Rec. 5098 (1977) (remarks of Rep. Mitchell).

to heal discrimination through goal-setting. Because different groups show different predilections for self-employment, discrimination's effect on procurement becomes obscure, and consequently set-aside goals are rendered arbitrary.

Statistical Bias of Big Business

The underlying claim of the "fair share" argument is that minorities receive too little Federal procurement. According to set-aside proponents, minorities should receive roughly 15-18 percent of Federal procurement, which is approximately equivalent to their representation in the population. The key assumption in this argument is that in discrimination's absence, all groups within society would possess the same desire and ability to own their own businesses, and would therefore enter and succeed in all business sectors at identical rates. Accordingly, a minority population of 20 percent would own 20 percent of the nation's small businesses, twenty percent of its large businesses, twenty percent of its aero-space industry, twenty percent of its janitorial firms, and so on.

As far as small businesses are concerned, if one were to accept the premise that discrimination accounts for all group differences (which I do not), then in the absence of discrimination, one would expect minorities to own a proportion of small businesses equivalent to their overall representation in the population.

The same logic, however, does not apply to big businesses.

Unlike small businesses, which are usually owned by one or two individuals, big businesses are generally publicly owned by hundreds or thousands of stockholders. Minority ownership of a big business, therefore, depends on the simultaneous, but coincidental decisions of hundreds or thousands of minorities to acquire at least 51 percent of a given firm's stock. And purely as a matter of mathematical probability, the likelihood that members of a minority group which comprises only 15 to 18 percent of the population would control at least 51 percent of a firm's stock is not 15 to 18 percent, but almost zero.

Fair share advocates make the mistake of equating small and big business ownership when, in fact, they are owned in fundamentally different manners. Correcting for this error, the "fair share" theory would read as follows: If all group differences disappeared in discrimination's absence, minorities would own roughly 15 to 18 percent of all small businesses, as well as roughly 15 to 18 percent of each big business. Of course, since ownership depends on control of at least 51 percent of a firm's stock, and minorities would hold only one fifth on average, one would not expect minorities to own but a few large businesses.

More than anything else, this particular factor--and not discrimination--accounts for minority's small share of total Federal procurement. Because of the nature of the products and services that the Federal government purchases, a few very large, publicly-held aerospace and defense contractors receive the majority of government procurement. Last year, in fact, 100 government contractors accounted for two thirds of all government procurement. Since minorities, solely because of their numbers, have almost no chance of holding at least 51 percent of the stock of one of these firms (and if they did, who would know?), they are likely to be underrepresented in total procurement.

For this reason, it is grossly misleading to use the minority share of total Federal procurement as an indicator of discrimination. The figure which reduces this problem and provides a clearer picture of minorities as Federal contractors is the minority share of small business procurement. According to the Small Business Administration's most recent figures, minority-owned firms received 14.18 percent of all Federal contracts awarded to small businesses in fiscal year 1983. 2/ Yet, minority-owned firms represent only 9 to 10 percent of all small businesses. Thus, one finds that minority achievement significantly exceeds current minority representation and is already essentially equal with Rep. Mitchell's ultimate goal. This despite the fact that minorities' share of small businesses, the presumed prerequisite for Rep. Mitchell's goal, still lags far behind minority representation in the general population.

Similarly, a 1983 study conducted for the Small Business

2/ Small Business Administration, The State of Small Business: A Report to the President (Washington, D.C.: Government Printing Office, 1985), p. 366.

Administration found that "smaller, minority-owned firms . . . appear to fare better in obtaining federal contract dollars than do smaller firms generally." 3/ In particular, the study found that smaller minority-owned firms received roughly 40 percent more federal contract dollar per employee than smaller nonminority firms.

Similar observations hold true regarding minority participation in the Federal-aid highway program. Even before the STAA set-aside boosted minority participation, minorities won roughly 20 percent of all subcontracting dollars--a proportion exceeding even Rep. Mitchell's ideal parity goal. Since the implementation of that set-aside, the minority share of subcontracting dollars has risen above 50 percent--nearly three times the representation of minorities in the population at large.

What do these figures say? Most importantly, they suggest that, contrary to the assertions of set-aside proponents, existing minority-owned firms receive more Federal contract dollars than their numbers would predict. Additionally, they reveal the extent of the deceptive character of the most-quoted statistic in set-aside debates--the minority share of total Federal procurement. While that figure may seem dismally low, the vast majority of that appearance results from a simple

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3/ U.S. Small Business Administration, An Analysis of Smaller Firm Participation in Federal Contracting, FY 1981, by Ann Parker Maust et al. (Washington, D.C., 1983), p. vi.

statistical bias--namely, that given the minority share of the population, one would expect to find very few minority-owned big businesses. In short, statistics which more accurately reflect the minority experience in Federal contracting cast strong doubt upon the notion that discrimination is a significant factor in government contracting.

The very nature of the government procurement process often acts to prevent discrimination against minority-owned firms. "It is virtually impossible," concluded a 1975 Civil Rights Commission report, "to extend preferred treatment to selected firms in formal advertising, as the contracts are awarded to the lowest responsive and responsible bidders." 4/ This is particularly significant in regard to the STAA minority set-aside. Since the vast majority of all Federal highway construction contracts are awarded via formal advertising, discrimination's potential impact on minority-owned highway contractors appears negligible. Consequently, the highway construction program appears ill-suited for a minority set-aside.

The Two Problematic Views

Each of two possible views of the "fair share" hypothesis is problematic. In the first, minorities' "fair share" represents an estimate of the portion of Federal procurement

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4/ U.S. Commission on Civil Rights, Minorities and Women as Government Contractors (Washington, D.C., 1975), p. 28.

which minority-owned firms would have received were it not for discrimination. But as the preceding text demonstrates, the process of establishing numerical goals which reasonably reflect the condition of nondiscrimination is both perilous and generally arbitrary (Can anyone reasonably explain the 10 percent figure in most legislative set-asides?). As is the case with minority set-asides, policymakers may simply err--and err significantly--in formulating goals.

The alternative view of the fair share theory holds that all groups, simply on the basis of some sense of fairness, deserve their share of the nation's resources. To the extent that this is the actual rationale behind minority set-asides, and I hope it is not, all Americans may legitimately fear government's encroachment on their civil rights. For without any clear guide as to what is fair, those in control of policy are left free to manipulate the society's resources both to the advantage of favored groups and to the disadvantage of unfavored groups. And it was under this guise that past policies of discrimination and prejudice flourished. To now advocate or condone the same policy would truly mean turning back the clock.

Principal Arguments for Set-Asides

In actuality, the fair share argument for minority set-asides is a relatively recent phenomenon. During set-asides' first ten years, their defense rested upon their predicted job-creating affect. And while this original employment argument now appears more as a supplement to the fairness theme, it maintains some significance in the overall set-aside debate. It is against this standard that set-asides' ineffectiveness is most apparent.

Self-employment

Data on self-employment are the best available indicator of entrepreneurial activity. Such data can be used to compare not only minority-owned business activity relative to white-owned business activity at a point in time, but also to track racial trends in firm creation over time. Moreover, the Census Bureau collects data on self-employment on a monthly basis, thereby providing a readily available and objective source of such data.

The table below presents trends in non-agricultural self-employment by race.

Self-Employment in
Non-Agriculture, by Race 5/
(in percent)

Year	(1) Share of minorities self-employed in Non-Agric.	(2) Share of whites self-employed in Non-Agric.	(3) Relative share of minorities self-employed in Non-Agric.
1972	3.8	6.9	55
1976	3.6	6.9	53
1982	4.1	7.7	53
1985	4.1	7.7	53

5/ Unpublished tabulations provided by the Bureau of Labor Statistics. The "share" in self-employment is calculated as the number of self-employed persons in non-agriculture divided by the number of employed persons in all industries.

The first two columns of the table give the share of self-employed workers in non-agricultural industries for racial minorities and whites respectively. The third column compares the share of minorities who are self-employed to the share of whites who are self-employed. In 1972, for instance, 3.8 percent of minorities were self-employed, while 6.9 percent of whites were self-employed. Hence, minorities were only 55 percent as likely as whites to be self-employed (3.8 divided by 6.9 equals .55).

The data show that in every year, whites are more likely to be self-employed than minorities. One of the major purposes of set-asides is to narrow this gap. The most straightforward test of whether set-asides have narrowed this gap is to compare self-employment figures before and after set-asides were implemented. Based on this test, it does not appear that set-asides have been effective.

The table shows that the size of the racial gap in self-employment has, if anything, widened under set-asides. In 1972, which roughly corresponds to the pre set-aside period, minorities were 55 percent as likely as whites to be self-employed. By 1985, they were only 53 percent as likely as whites to be self-employed. Of special interest for evaluating the effects of the STAA set-aside, the incidence of self-employment for minorities and whites alike did not change between 1982 and 1985. Since the effects of the STAA set-aside provision should have been measured in the post-1982 period, it thus appears that this provision has not had any aggregate effect on minority firm creation.

To better focus on the firm-creating effect of STAA in particular, the table below presents racial trends in self-employment in the construction industry.

Self-Employment in Construction, by Race 6/ (in percent)

Year	(1) Share of minorities self-emp. in Construction	(2) Share of whites self-emp. in Construction	(3) Relative Share of minorities self-emp. in Construction
1972	.48	.96	50
1976	.44	1.06	42
1982	.52	1.20	43
1985	.55	1.31	42

The results are largely as before. In 1972, minorities were 50 percent as likely as whites to be self-employed in the construction industry. By 1985, this figure was 42 percent. Hence, relative to whites, minorities were less likely to be self-employed in the construction industry. Examining the 1982-1985 period reveals no discernable impact of STAA on minority firm creation.

While there may be individual instances where set-asides encouraged the formation of minority-owned firms, at the national level the figures suggest that set-asides' impact has been insignificant.

6/ Unpublished tabulations provided by the Bureau of Labor Statistics. The "share" in construction is calculated as the number of employed persons in construction divided by the total number of employed persons.

B. Employment Effects

There can be no doubt that set-asides have increased the minority share of Federal procurement. But, in the absence of minority firm creation, this increase in procurement raises the possibility that existing firms are the main beneficiaries of set-asides. Thus, the main effect of set-asides may be to increase the size of existing firms. This may be an unintended consequence of set-asides, but proponents could argue that it is not necessarily an undesirable development. In particular, targeting set-aside funds at established firms might increase minority employment more than targeting such funds at fledgling firms with uncertain prospects. Thus, even in the absence of minority firm creation, it is possible that set-asides have nevertheless reduced minority unemployment.

Little evidence exists regarding the validity of this argument, however. As the most recent comprehensive study of set-asides, the Abt Associates' draft study of STAA, observed:

> When the amendment to the STAA of 1982, which became section 105(f), was introduced, it was maintained by its author that a 10 percent set-aside would have very positive impacts upon minority construction employment. This is a logical presumption, but it is neither confirmed nor clearly refuted by any hard evidence.
>
> This study found little to fill the gap of fact, either in the literature or in the field. From field conversations, we can report that minority employment was not an issue which surfaced regularly with respondents. When it did, the general feeling usually was that, though there must be some minor impact, there simply weren't major ethnic or racial differences between

> the construction workforces employed by DBE and non-DBE contractors. 7/

Other evidence also suggests that set-asides have had little impact on minority employment. The table below presents trends in employment in the construction industry by race.

Employment in Construction, by Race 8/
(in percent)

Year	(1) Share of minorities employed in Construction	(2) Share of whites employed in Construction	(3) Relative Share of minorities employed in Construction
1972	5.6	6.5	86
1976	4.1	6.2	67
1982	4.0	6.0	66
1985	4.3	6.8	63

The first two columns give the share of racial minorities and whites, respectively, who are employed in the construction industry. The third column presents the share of minorities in construction relative to the share of whites in construction. One can see that minorities are relatively underrepresented in construction employment. In 1972, for instance, 5.6 percent of minorities were employed in construction, while 6.5 percent of whites were so employed. Hence minorities were only 86 percent as likely as whites to be employed in construction.

7/ Abt Associates, Inc., An Assessment of Program Impacts of the Disadvantaged Business Enterprise (DBE) Requirement in the Federal-Aid Highway Construction Program (1986), pp. 147-48 (hereafter cited as Abt STAA Draft Study).

8/ Unpublished tabulations provided by the Bureau of Labor Statistics. The "share" in construction is calculated as the number of employed persons in construction divided by the total number of employed persons.

Since set-asides have been disproportionately targeted at the construction industry, if the minority employment argument held merit, it would be expected that minority employment would increase relative to white employment. In fact, the table indicates that just the opposite has occurred. By 1985, compared to whites, minorities were less likely to work in the construction industry than at any time since 1972. Clearly, these figures do not support the minority employment argument of set-aside proponents.

Negative Consequences of Set-Asides

A. Increased Government Costs

One of the negative consequences of set-asides has been an increase in the cost of government-funded projects. This conclusion is supported by several different sources: evidence introduced to the Commission and before the Senate by State officials and interest groups, and the Abt Associates 1986 draft report on the STAA program.

Several witnesses before the Senate estimated the percentage increase in costs caused by STAA set-asides. Ray D. Bass, Director of the State of Alabama Highway Department, projected that the set-aside resulted in a 5 percent increase in highway costs:

> The reasons being the Prime Contractor having to accept quotes that are higher in order to meet his requirements. Also, the Prime is having to sublet work he normally would do himself, thereby inducing a less efficient construction operation. Increase [sic] costs associated with contract

> performance--financial uncertainties associated with working with unknown, underfinanced or inexperienced DBE's [sic] also adds to the cost. 9/

The American Road and Transportation Builders Association similarly testified that "[q]uotes for work by disadvantaged business firms submitted to prime contractors average approximately 10.7 percent more for the work." 10/

The most significant and comprehensive evidence on the increased-cost issue appears in the Abt Associates draft study for the Federal Highway Administration on STAA. That report concludes:

> [C]ounting increases in both construction costs and administrative/support costs, one arrives at about $180 million in FY 83-FY [1984], which represents about 15 cents per constant 1984 dollar increase in awards to DBEs. 11/

B. Abuses of Set-Asides

Perhaps the most frequent criticism of set-aside programs is that a significant number of their beneficiaries are often not bona fide MBEs, but front or sham firms. These shams have taken two basic forms: (1) the "paper" DBE--a firm which is actually owned and controlled by nonminorities but claims disadvantaged status, and (2) the DBE which simply "brokers"

9/ The Disadvantaged Business Enterprise Program of the Federal-Aid Highway Act, Hearing Before the Subcomm. on Transportation of the Senate Comm. on Environment and Public Works (hereafter cited as Senate STAA Hearing), 99th Cong., 1st Sess. 204 (1985)(statement of Ray D. Bass).

10/ Id. at 230 (statement of Robert Hirschman).

11/ Abt STAA Draft Study, p. xi.

its work to other firms. Both types are illegal.

Recent evidence suggests that the exploitation of set-asides by front or sham firms continues largely unabated. On November 29, 1984, the New Jersey Transportation Department revealed that it had disqualified almost a fourth of the 200 companies doing roadwork as either DBEs or WBEs. 12/ The Special Assistant to the Secretary of Transportation in Illinois has stated that only 40 percent of the certified DBEs in that State are legitimate firms. 13/ And according to three September 1984 Department of Transportation audit reports, half of the minority-owned highway contractors in New England, and also in Oklahoma and Arkansas, were "ineligible or questionable." 14/

The 1986 Abt Associates draft study of STAA presents the most recent and comprehensive appraisal of the front problem. While the study cautions that reliable data are scarce and often anecdotal, it concludes that, on the basis of existing evidence, the front problem "remain[s] significant enough . . . to warrant serious attention." 15/

Within its nine-State sample, the study's investigators

12/ *See* Jonathan Friendly, "Road Contractors Found to be Evading Anti-Bias Law," *New York Times*, Nov. 30, 1984, p. B5.

13/ *Senate STAA Hearing* at 331 (statement of John C. Vande Velde).

14/ Michael Oreskes, "The Set-Aside Scam," *New Republic*, vol. 191 (Dec. 24, 1984), p. 18.

15/ *Abt STAA Draft Study*, p. 139.

discovered widely disparate opinions on the magnitude of the front problem:

> Of the nine states [investigated], four had a reasonably strong and broadly based concern over the impact of fronts . . . . The impact estimates for the proportion of "DBE" work going to fronts or subject tofront behavior ranged in these four states from 15 percent to 80 percent. By the same token, respondents in 5 states had relatively little practical concern over the current impacts of fronts in their states. Impact estimates in these states ranged from 0 - 5 percent to 20 percent. If one accepts these estimates as meaningful, and weights them according to the sizes of each state's Federal-aid highway program, one calculates an estimate of fraudulent activity overall in the nine states of about 20 percent, possibly up to 25 percent. 16/

C. Nonminority Displacement

One of the most serious issues involved in set-asides, and one that Congress failed to consider until very recently, is the adverse effect these programs have on targeted industries. In the case of federally funded highway construction, STAA's 10 percent set-aside has led to financial hardship and bankruptcy for a potentially large number of nonminority subcontractors.

The STAA displacement problem stems from two of highway construction's basic characteristics. First, the vast majority of highway construction (80 to 90 percent) is performed by prime contractors, leaving only a very small portion for subcontractors. Second, nearly all minority-owned firms in highway construction are subcontractors. Therefore, since

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16/ Ibid., p. 142.

nearly all minority-owned firms are subcontractors, and subcontractors perform only 10 to 20 percent of all highway work, STAA's 10 percent requirement, in effect, mandates that minority-owned firms perform the majority of subcontracting work on highway construction.

As a result of this requirement, some nonminority subcontractors face severe economic problems. Southern Seeding Service, Inc., of Greensboro, North Carolina, is a case in point. Formed in 1963, Southern Seeding is owned by Ralph D. Stout, Jr.. Stout twice served on President Carter's White House Conference on Small Business, and his firm has been recognized by the State of North Carolina for outstanding service. However, despite its excellent record and its submission of numerous low bids, at the time of the Commission's consultation in March 1985, the Southern Seeding Service had not received a contract in the last two years. As Mr. Stout aptly put it, his firm had been "literally legislated out of the marketplace."

Another nonminority firm whose business was substantially disrupted by the set-aside program was Warning Lites of Illinois, Inc.. In testimony before the Senate Transportation Subcommittee, company vice president John Vande Velde described his firm's plight:

> On the average, during 1984, our bid prices were seven percent lower than [that of the DBE which had been created by Warning Lites]. . . . However, the low bidder was not awarded the contract in most of the instances. Every contract where both Warning Lites and the DBE bid, Warning Lites

> was low. In 1984, we bid $8,000,000 of a possible $30,000,000 of work. Historically, we received forty to fifty percent of the contracts we bid. But in 1984, we received only $350,000, or four percent. And in every case we were low. We learned we could no longer compete equally. We had the best prices for reputable service yet we could not work. And 1985 has only proven worse. This year, our success rate is down to three percent. 17/

After examining broader statistical evidence, the Abt Associates draft study of STAA concluded:

> Clearly . . . non-DBE market shares of subcontracting markets have decreased substantially because the DBE requirement is being met principally through subcontracts with DBEs . . . . Particular non-DBE specialty subcontractors have seen their Federal-aid highway construction markets shrink or even virtually disappear. 18/

While the study points out that increases in DBE market shares vary significantly among various specialties and regions, national increases in DBE contract awards for some specialties present ample reason for concern about the displacement effect. Between fiscal years 1982 and 1984, awards to DBEs rose 470 percent in guardrail work, 1,049 percent in hauling, and 1,331 percent in storm sewers and minor structures. 19/ The Abt STAA study evidence reinforces on a national scale the displacement effect suggested in anecdotal

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17/ Senate STAA Hearing at 334 (statement of John C. Vande Velde).

18/ Abt STAA Draft Study, p. xi.

19/ Ibid., p. 28.

accounts. While the precise number of non-DBEs displaced by the program remains unknown, it may be significant.

Life Without Set-Asides

The best available evidence indicates that set-asides in general and the STAA set-aside in particular have not had a positive effect on the economic status of minorities in general. Set-asides have not fostered minority firm creation, and there is little reason to think that set-asides have increased minority employment.

Aside from conferring few benefits on the general minority population, set-asides have imposed significant costs on society in general. The most recent evidence suggests that set-aside programs may increase the costs of government contracting by fifteen cents per dollar set aside. On an annual basis, the aggregate cost of set-asides may be near half a billion dollars.

Set-asides are also divisive and patronizing. By institutionalizing racial preference into government contracting, set-asides may create the unfortunate and false impression that many minorities cannot succeed without government largesse. Moreover, in a society dedicated to the attainment of colorblindness, the irrelevant characteristics of race, gender, or ethnicity should occupy no place in government programs.

Given these fundamental problems with set-asides, an important question is what would happen if set-asides were abolished. The answer to that question depends, foremost, on how many minorities benefit from these programs. The potential beneficiaries of set-asides are minority firm owners and their employees. The first group, minority entrepreneurs, represent less than 5 percent of the total minority population. Moreover, very few self-employed minorities benefit from set-asides--only about one percent of self-employed minorities even participate in Federal set-aside programs. In other words, minority firm owners participating in set-asides represent less than one tenth of one percent of all minorities.

In terms of employment, the most recent evidence indicates that minority-owned firms employ, at most, three percent of all minority workers--and that assumes that all employees of minority-owned firms are themselves minorities. Thus, taking into account the fact that only a small percentage of minority firms participate in the set-asides, the likely employment effect of set-asides' abolition would be imperceptible.

Given the fact that only a tiny fraction of minorities participate in these programs (let alone depend on them), the assertion that minorities in general would suffer from set-asides' abolition cannot be justified. Moreover, the finding that set-asides have been largely ineffective also works in reverse; dismantling set-asides likely would lead to no decline in minority employment and to little or no decline in the size of the minority business sector.

Minority set-asides were conceived as a solution to some of the serious social and economic problems facing minorities.

Unfortunately, they have not succeeded in realizing their objectives. The cost of minority set-asides to the general public far outweighs their benefit to a handful of entrepreneurs. Most importantly, set-asides offend the bedrock principle of civil rights--that all Americans are equal before the law.

Statement of the

Western Governors' Association

Presented to

The Subcommittee on Transportation
Committee on Environment and Public Works

of the
United States Senate

on the Topic of
The Reauthorization of the Federal-Aid
Highway Program

and

S 2405
The Federal-Aid Highway Act of 1986

May 30, 1986

Mr. Chairman and members of the subcommittee, thank you on behalf of the Western Governors' Association (WGA) for the opportunity to provide our views on the reauthorization of the federal-aid highway programs and on the Federal-Aid Highway Act of 1986 which was recently introduced as S 2405. The Western Governors' Association is an independent, non-partisan organization, created by the governors of sixteen western states and the three Pacific territories. This statement is submitted as an expression of the Association's views and it is requested that this statement be made part of the record.

The multi-year reauthorization of federal-aid highway programs is central to the continued ability of western states to complete the Interstate system and to meet the increasing demands being placed on their highway systems. The introduction of the Federal-Aid Highway Act of 1986, is a positive step towards the reauthorization of these programs which expire on September 30, 1986.

This bill contains many features supported by the Association which were included in testimony presented by Governors William Sheffield of Alaska and William Janklow of South Dakota on behalf of the Association, during the committee's hearing at Coeur d'Alene, Idaho. Within this context of support we would like to make comments on specific features of the bill.

Interstate-Primary Program

The flexibility of states to manage their Interstate and primary programs under this new category is commendable, however the reduction in authorizations severely limits these positive features. The highest highway program priority for the Western Governors is the completion of the Interstate system. The level of program reductions places the 1990 date for completion of the Interstate system in question, based on the $3 billion per year authorization contained in S 2405. The flexibility allowed under the program is mitigated by the fact that the three programs face reductions of program levels below those authorized for Fiscal Year 1986.

Encouragement is found in both the Chairman's introductory statement and remarks of May 20, as well as those of other subcommittee members, that the obligation ceiling should be increased by an amount up to $1 billion annually. The committee is urged to support restoration of funding for the programs under the Interstate-Primary category to levels which reflect this nation's highway needs.

The WGA fully supports the use of current apportionment formulas for Interstate 4R and primary funds. The formulas provide for an equitable apportionment of highway funds utilizing factors which account for the extent (mileage) of the highway systems, the level of use on the systems and the population primarily served by each system. These factors were studied by the Federal Highway Administration as part of the Section 137(b) study, of the Interstate 4R formula, dated December, 1983 which concluded that the current formula should not be changed.

Obligation Ceilings

The concept of user fees for funding highway improvements has been a basic tenent of the federal-aid highway program since its inception. Obligation ceilings are employed to control the expenditure rate of authorized spending. When ceilings are set lower than available contract authority, the public does not receive the benefit for which they paid their fees. Programmed projects which depend on enacted contract authority are delayed, states build up a backlog of projects and a cash balance continues to accumulate in the Highway Trust Fund. The current cash balance in the Highway Trust Fund is estimated at $10 billion. According to estimates made by the Highway User Federation on Safety and Mobility, this substantial balance would support a $15.3 billion annual highway program. The increased obligation authority would reduce the Trust Fund balance over the next four years to the $3-5 billion level, which is within the range necessary to prevent initiation of provisions contained in the Byrd Amendment.

Such actions would meet the objectives of the recently passed "Sense of the Senate" resolution which calls for increasing highway funding levels and would permit spending of current receipts, interest earned, and would reduce the significant cash balance held in the Trust Fund.

The current bill, S 2405, provides authorizations of $13.1 billion and an annual obligation ceiling of $12.35 billion, a six percent decrease from the Fiscal Year 1986 obligation ceiling of $13.125 billion. Proponents for holding obligations at artifically low levels are engaging in budgetary bookkeeping practices of using these user fees as a deficit reduction tool. In applying these techniques, the use of these funds for the purposes for which they were collected is lost while the deterioriation of this nation's highway system continues at an accelerated pace. There are measurable losses to the economy as a result of these practices which lead to fewer jobs, fewer purchases of materials and goods, lost productivity, and increases in travel time and vehicle maintenance costs.

Related to this issue, although not within the strict purview of the Committee is the extension of highway user fees and excise taxes. These fees expire in Fiscal Year 1988 and their extension is necessary to support the reauthorization of the federal-aid highway programs. These user fees are dedicated to the construction and maintenance of the federal-aid highway system and should reflect the level of commitment on the part of Congress for funding improvements to that system. The Committee is supported in its efforts to seek reauthorization of these fees.

Federal Lands Highway Program

The Committee's attention is directed to the vast amounts of federal land in the West. More than 93 percent of all federal lands are located in the sixteen western states. The Association is supportive of the Committee's action which maintains the historic funding levels of $50 million for the Forest Highways and Public Lands Highway programs. These highways provide access for millions of Americans desiring to experience the wonders and beauty of these lands. These highways also allow access to the abundant resources lying within these lands which are a valuable assest to this nation's economy.

Combine Road Plan Demonstration Project

As supported in our testimony before the Committee during hearings in Coeur d'Alene, Idaho that "the Western Governors' Association feels strongly that, to the extent the Congress is faced with questions concerning the administration of highway programs, those questions should be resolved in favor of providing more flexibility to the states." The ten state demonstration program contained in S 2405 is a positive step in developing and evaluating differing models for achieving this flexibility. Unlike the Administration's Highway and Transit Block Grant Program (Title IV of HR 4144) which is a stalking horse for achieving massive program cuts in transit assistance through the playing off of urban highway and transit needs against each other and rural interests, this program is designed to give maximum responsibility to the states and local governments in deciding their priorities, project requirements and program administration.

55 National Speed Limit

The Association has no policy on the 55 national speed limit at this time. Arizona is facing up to ten percent reduction of its non-Interstate highway funds this year because of excessive violations of the speed limit. Additionally, several member states including Arizona, California, Nevada, North Dakota, and South Dakota face possible sanctions next year. The Committee's consideration of the issue of sanctions and the appropriateness of the 55 mph speed limit on the rural Interstate system is timely.

Concluding Remarks

We conclude our remarks, Mr. Chairman with a statement of concern that the time to pursue this legislation is upon Congress. There are few legislative days left on Congress' calendar and many significant issues remain before the 99th Congress. It is our hope that this Committee and the Congress will complete work on this legislation enabling the timely reauthorization of the federal-aid highway program before the September 30, 1986 deadline.

We appreciate this opportunity to comment on the reauthorization of federal-aid highway programs and specifically S 2405. WGA will be glad to supply any additional information you may request concerning these remarks or other western issues.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 2, 1986

The Honorable Steve Symms
Chairman
Senate Subcommittee on Transportation
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to provide testimony on behalf of the State of Alaska. I would like to ask that this letter be made part of the hearing record on reauthorization of the federal-aid highway program, as proposed in S.2405.

The people of Alaska look forward to the additional highway improvements possible under the funding levels and program modifications proposed in S.2405. I offer my compliments to you and your fellow Senators on the fine job you did in preparing S.2405. It not only responds to the transportation needs of many Western states, but it also retains many of the features of current law that were addressed in testimony we submitted during your field hearing in Coeur d 'Alene, Idaho last September. We would like, however, to offer additional comments on several issues of importance to Alaska.

Funding Levels - We understand that funding levels proposed for each transportation program component are consistent with the overall budget ceiling of $13 billion allocated for the nationwide highway program. While we appreciate the broad budget framework within which the Congress and this committee must operate, we do not agree with the use of an artificial constraint on trust fund spending for highways and airports as part of the process of reducing the federal deficit. Outlays from the trust funds are supported by user fees and they can only be used to pay for transportation improvements financed through the respective trust funds. To limit the use of these funds as part of the budget process comprises the intent of dedicated funds for the purposes of maintaining and improving the national transportation network.

I would urge the committee to set funding levels for the highway program at a level the trust fund, including its interest earnings, can support. The Highway Users Federation has estimated that a full $15 billion a year could be made available to the states from the highway trust fund. Given the buildup of funding in the highway trust fund over the last 20 years, I believe it will take this level of authorizations to reduce the trust fund balance to an appropriate level.

Funding Arrangements - We in Alaska also want to commend the committee for maintaining stable funding arrangements in the establishment of the Interstate-Primary program which allows greater flexibility to the states. Each state counts on stable, continued funding from each of the basic categories of the federal-aid highway program. In combining the three categories of Interstate Construction, Interstate 4R and Primary, S.2405 continues such key funding arrangements as the Primary apportionment formula established in the Surface Transportation Assistance Act of 1982, the Interstate 4R formula established in the Federal-Aid Highway Act of 1981, and the 1/2 percent minimum for Interstate Construction. Each of these funding arrangements is critical to the continued health and improvement of America's federal-aid highway system.

S.2405 also recognizes in Section 135 the importance of historic funding arrangements by continuing them for the forest highway program. Each year $50 million in forest highway funding is available to the states to improve access to and within the nation's national forests. The nation's two largest national forests are located in Alaska; and we count on this funding source to improve access to their many resources.

Disadvantaged Business Enterprise - This past fall (November 20, 1985) we provided testimony to the Subcommittee on Transportation concerning Section 105(f), the Disadvantaged Business Enterprise (DBE) program. The incorporation into S.2405 of a $10 million annual gross receipts cap on the size of contractors eligible to be certified as DBEs is consistent with our earlier recommendation. We further support the provisions for funding technical assistance and the development of criteria for uniform certification.

Section 118(f) - The establishment of the Interstate-primary program, and the elimination of the Interstate Discretionary program in S.2405, resulted in the need to rewrite Section 118. Section 106 of S.2405 is the rewritten Section 118.

Section 118(f) of Title 23 in the current law is a provision that only affects Alaska. This section provides that:

> Funds made available to the State of Alaska under this title may be expended for construction of access and development

roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

During the redrafting of Section 118, Section (f) was inadvertently omitted. Our staff discussed this provision with both FHWA and the committee staff, and we understand that this was an oversight and the provision will be reinserted in S.2405. We wish to thank the FHWA and the committee for their cooperative attitude.

Mr. Chairman, the reauthorization of the Federal Aid Highway program is a matter of very high priority to Alaska. We are appreciative of the hearings this committee held in preparation for the drafting and introduction of S.2405, and the fact that the bill as introduced is very responsive to our transportation program needs.

I appreciate this opportunity to provide testimony on behalf of the State of Alaska.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Commissioner Richard Knapp
John W. Katz
Ray Barnett, FHWA
Frank Francois, ASHTO
Phil Shimer, WGA

CARL B. "BEV" BLEDSOE

SPEAKER OF THE HOUSE

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

April 28, 1986

The Honorable William L. Armstrong
528 Hart Senate Office Building
Washington, D. C. 20510

Dear Bill:

As you know, the amount of federal dollars available to states for the construction of highway projects has been steadily decreasing for several years. The time has come for us to take a fresh look at highway needs and the means by which we can acquire funds to meet those needs.

The situation is well known to you. Under current law, if a state builds a toll road, there can be no federal funding for construction or maintenance of that road. Further, if a state converts an existing road to a toll road, all previously expended federal funds connected to that road must be returned to the federal government.

These laws have served a good purpose in the past. They do not, however, serve any good purpose today. It is important that they be amended. Without federal assistance in the form of funding support, it is safe to predict that our state's highways will continue to deteriorate to the point that they become unsafe for travel.

There are at least four bills now pending in Congress which address this increasingly critical issue. All four bills recognize that financing new highway construction through tolls is the most efficient means of realistically coping with budget constraints while meeting our commitment to efficient and safe transportation.

We urge you to closely examine the legislation proposed by Senator Stafford (S2189), Senator Chiles (S1488), Senator Thurman (S1890) and Representative Rowland (HR3473). We can confirm the urgency of the situation in your own state of Colorado by taking the wheel of your car during your next visit home. The problem is real. Changes in legislation affecting toll roads may provide the most appropriate and efficient solution to that problem.

We look forward to receiving your views on this matter.

Sincerely,

Richard D. Lamm
Governor

Bev Bledsoe
C. B. "Bev" Bledsoe
Speaker of the House

Ted L. Strickland
Ted L. Strickland
President of the Senate

Larry Trujillo, Sr.
House Minority Leader

Ray E. Peterson
Senate Minority Leader

Charles "Bud" Hover, Jr.,
Chairman,
House Transportation Committee

Kathy Arnold
Chairman,
Senate Transportation Committee

STATEMENT OF SECRETARY THOMAS E. DRAWDY

BEFORE THE

TRANSPORTATION SUBCOMMITTEE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

RELATING TO

REAUTHORIZATION OF THE FEDERAL-AID
HIGHWAY PROGRAM

MAY 20, 1986

THOMAS E. DRAWDY, SECRETARY
FLORIDA DEPARTMENT OF TRANSPORTATION
HAYDON BURNS BUILDING
TALLAHASSEE, FLORIDA 32301-8064

INTRODUCTION

Good morning Mr. Chairman and distinguished members of the Committee. I am Thomas E. Drawdy, Secretary of Transportation for the State of Florida. It is a pleasure to be here today to provide input to the reauthorization of the Federal-Aid Highway Program.

Let me say up front that I totally support your initiatives to raise program levels based on the fiscal capacity of the Highway Trust Fund. The fund was established some 30 years ago to finance a national highway program. The user fees, which support the fund, should be fully used for their intended purpose and no longer permitted to accumulate in the form of large cash balances.

In my testimony today, I would like to address several issues of importance to the State of Florida. These include: Interstate completion, toll provisions, right-of-way donations/advance acquisitions, Disadvantaged Business Enterprise Program (DBE), bridges, and obligating authority provisions.

INTERSTATE COMPLETION

Completion of Florida's Interstate System remains a high priority. We have not relaxed our current objective to let the last construction contract by 1990. In our judgment, continuation of a separate categorical program for Interstate completion is preferable to avoid the perception of a lesser Congressional commitment. At the same time, however, we were pleased to find in S. 2405 that $3 billion per year had been identified, within the Interstate/Primary consolidation, for apportionment based on the ICE. We regard a $3 billion program level as an absolute minimum and encourage the Committee to increase this level, particularly, if by subsequent amendment to the bill, program levels are increased commensurate with the fiscal capacity of the Highway Trust Fund.

TOLL PROVISIONS

From a State DOT perspective, it was discouraging not to find a comprehensive toll program included in S. 2405. The gap between highway needs and funding continues to widen. Additional funding options must be identified and made available to the states.

Last year, working in concert with Florida's Senator Lawton Chiles, we had developed a rather comprehensive toll package which was subsequently introduced in the Senate in S. 1488. We strongly believe the elements of that package remain both timely and appropriate, given today's fiscal climate, and encourage the Committee to consider them as S. 2405 moves through the process.

Specifically, the toll proposal contained in S. 1488 permits states to co-mingle federal-aid with toll revenues for:

- the construction of new toll roads; and
- the major reconstruction of existing highways, even if these highways were toll free prior to the proposed reconstruction.

In addition, S. 1488 allows tolls to be collected indefinitely, with revenues in excess of operation, maintenance and debt service requirements available for other transportation projects. S. 1488 also applies this concept to existing toll roads where current Section 129 agreements exist.

In Florida, we have a Section 129 agreement in force on Alligator Alley, a two-lane toll road which crosses the Florida Everglades and is being converted to an Interstate highway. We have an immediate need to extend toll collections beyond repayment of existing debt, which is imminent, so that all required project features can be financed as part of the conversion of Alligator Alley to Interstate 75. The FHWA has limited its participation in some of the environmental mitigation measures required by the EIS, so our intent would be to extend toll collections to cover these nonparticipating costs.

Should the Committee decided to relax current toll restrictions, I would urge that toll financing of major bridge replacements also be given consideration. Current law permits federal participation in the construction of new toll bridges but does not allow the same flexibility when replacing existing toll free bridges, which often times can be as significant in both cost and scope as initial construction of a new structure.

RIGHT-OF-WAY DONATIONS/ADVANCE ACQUISITIONS

Coming from a high-growth area fraught with rapidly escalating land costs, we believe Section 125 of S. 2405, regarding right-of-way donations, provides a much needed statement of federal policy. This section of the bill permits land to be donated in advance of the environmental and planning process for a prospective highway project, provided certain conditions are met: the donation will in no way affect the required planning process for the location and environmental review of the decision with respect to alignment; if during the alignment study and environmental analysis the route for which the land was donated is determined not to be feasible, the donation of right-of-way would be cancelled; and, where such cancellations occur, the land will be revested in the grantor or successors in interest.

I encourage you, Mr. Chairman, and distinguished members of the Committee, to expand this section of the bill to include all advance right-of-way acquisitions, and not limit it solely to donated lands. In Florida, we are presently developing an advance right-of-way acquisition program but face inconsistencies with the federal planning and environmental process. Ultimately, federal participation in specific highway projects could be jeopardized. By expanding the provisions of Section 125 to cover all advance acquisitions, it would afford a workable mechanism for states to adequately deal with advance acquisitions in major transportation corridors where right-of-way costs, in some cases, are fast approaching levels equal to or greater than construction costs.

I have attached to my statement some suggested language which may be helpful to the Committee in this regard (Attachment I).

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Section 130 of S. 2405 modifies the existing DBE Program enacted under Section 105(f) of the '82 STAA.

With respect to the definitional changes contained in subsection (b), we are concerned with two of these changes. First, lowering the gross receipts criterion may be counterproductive, particularly if the intent, as implied by subsection (f) of the bill, is to expedite development of DBE firms to prime contractor status. A $10 million threshold is not representative of a typical prime contractor performing in the transportation business. In Florida, the average number of contracts let per month by the DOT is about 35, with an average dollar value of about $1.2 million per contract. Thus, a $10 million annual gross receipts criterion would not be competitive when you consider that a typical prime contractor may take on several DOT contracts each month in addition to contracts with other clients. Lowering the threshold to $10 million would, in our judgment, disqualify the DBE firms most likely to gain, with appropriate training and development, prime contractor status. We would, therefore, encourage you to retain the existing gross receipts criterion established by the S.B.A.

Second, while we agree that women, as a class, have been economically disadvantaged, we question the presumption of social disadvantage. If the latter was ever challenged, we doubt that an effective defense could be presented in a court of law. Furthermore, including women under the 10 percent goal by presumptive definition tends to dilute the flow of federal funds to the firms originally intended, under current law, to receive such funds. We encourage the Committee to modify its treatment of women by covering them under a separate definition, focused on economically disadvantaged criteria, with a separate mandated goal.

Subsection (c) of S. 2405 deals with technical assistance. The deficiency in this area, as we see it, is a lack of sufficient federal support. We previously proposed to the Committee that up to 1 percent of federal highway apportionments be available, at the option of the state, to finance training and financial assistance programs. As you know, the current supportive services program is underfunded and its scope is too narrow. For example, certain types of critically-needed financial assistance are ineligible for federal participation such as bond and loan guarantees. Therefore, I will reiterate our previous proposal for an apportionment takedown approach to funding technical and financial assistance programs and for a broadening of federal-aid eligibility criteria.

Subsection (d) of the bill establishes a federal uniform certification process which, in concept, makes good sense. I would caution the Committee, however, to ensure that certification criteria are not overly prescriptive or pre-emptive of the certification processes put in place by the states since enactment of the '82 STAA. For example, requiring analyses of bonding and financial capacities could be expensive, time consuming and beyond the qualifications of most state administrators. Further, if a uniform certification process is established, I would suspect the Committee would not want it to serve as a disincentive to firms attempting to enter the program by increasing both the cost and time required to become certified. I would strongly recommend that uniform criteria be developed in consultation with the states.

BRIDGES

The replacement and rehabilitation of deficient bridges is a very high priority for the State of Florida. I was pleased to see in S. 2405 the retention of a separate categorical program for this purpose. In our high-growth environment, we are increasingly faced with the premature functional obsolesence of many major structures due to traffic volumes growing at inordinately high rates, particularly in urban areas. While these structures are high cost, in terms of their replacement, the current criteria for allocating discretionary bridge funds leaves them non-competitive for this funding source, since the discretionary allocation formula relies heavily on factors driven by structural obsolesence.

The Acosta Bridge in Jacksonville, Florida falls into this category. It is scheduled for replacement in federal fiscal year 1987-88. The total cost of this project is $112 million. Previously, P.L. 98-63 made available $23.2 million in federal funds. With state matching funds, a total of $29 million is currently available for this project, which is sufficient to finance the design and right-of-way phases. The construction phase, estimated to cost $83 million, is presently unfunded.

The FHWA has repeatedly advised us that additional federal funds, under current discretionary allocation criteria, would not be available for the Acosta Bridge in FY 1988 and that it could take as long as five years before this project would be fully funded. Given the initial federal investment in this project and the legislative history associated with it, I respectfully request the Committee's assistance in expediting the release of additional discretionary funds.

OBLIGATING AUTHORITY PROVISIONS

During the height of the prolonged impasse over approval of an Interstate Cost Estimate, Florida was one of seven states forced to return obligating authority for redistribution. At the time, we were faced with circumstances beyond our control. Apportionments, namely Interstate construction, were insufficient to enable us to fully use our FY 1984 obligating authority allocation. This caused Florida to return $58.4 million in obligating authority for redistribution to other states.

The Committee, recognizing that the circumstances which caused us to forfeit obligating authority were, in fact, beyond our control, included corrective language in several subsequent highway reauthorization bills. First, in S. 3024 (9/26/84), then in S. 178 (1/3/85) and, finally, in S. 391 (2/5/85). We have yet to catch up, so to speak, since current law does not provide a mechanism for us to do so. As you know, the so-called August redistribution (of obligating authority) process is not sensitive to the factors which contributed to Florida's forfeiture of the $58.4 million. I, therefore, respectfully request the Committee to include corrective language in S. 2405 similar to the previous language which had gained your acceptance, most recently, last year.

Attached to my statement is some suggested language which may be helpful in this regard (Attachment II).

CONCLUSION

I commend you, Mr. Chairman, and the Committee for introducing S. 2405 at an early date, recognizing that current law expires on September 30, 1986. I totally agree with your opening statement that S. 2405 is a starting point, and a good one at that. Be assured of my Department's willingness to help the Committee in any way as we appreciate the urgency and necessity for enactment of a new surface transportation bill by October 1st.

This concludes my remarks, Mr. Chairman, and thank you for the opportunity to appear before you today.

ATTACHMENT I

RIGHT-OF-WAY DONATIONS

AMEND S. 2405, SECTION 125, SUBSECTION (b)

"(b) Section 323 of title 23, United States Code, is amended by -

(1) inserting after ["Donations."] the title an "(a)", [and]

(2) [(1)] revising the title of Section 323 of title 23, United States Code, to read: "Donations and Advance Acquisition of Rights-of-Way," and

(3) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) or an advance acquisition of right-of-way including voluntary acquisitions (including purchases) and involuntary acquisitions (including eminent domain) may be made at any time during the development of a project: Provided, That any document executed as part of such donation or acquisition, including eminent domain court orders, clearly indicates that --

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

" (ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired [by gift or donation] under this subsection shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document."

Language [in brackets] to be deleted
Language underlined to be added

ATTACHMENT II

OBLIGATING AUTHORITY PROVISIONS

AMEND S. 2405, SECTION 133

Add a new subsection "(e)" as follows:

"(e) The limitation established by subsection (a) of this section shall not apply to an amount of funds apportioned under section 104(d)(1)(A) of title 23, United States Code, during any fiscal year beginning after September 30, 1986, to a State equal to that amount which such State returned in unused obligation authority in August 1984 which would not have been returned if all of the Interstate construction funds authorized for apportionment during the fiscal year ending September 30, 1984, had been apportioned in the fiscal year ending September 30, 1984."

Department of Transportation
State of Georgia
No. 2 Capitol Square
Atlanta, Georgia 30334-1002

THOMAS D. MORELAND
COMMISSIONER

HAL RIVES
STATE HIGHWAY ENGINEER
DANIEL O. KELLY
TREASURER

May 27, 1986

The Honorable Senator Robert P. Stafford, Chairman
Senate Environment & Public Works Committee
133 Senate Hart Office Building
Washington, D. C. 20510

Dear Chairman Stafford:

I would like to thank you and your committee for the diligent work you have done in developing transportation legislation. the Federal-Aid Highway Program is a critical ingredient in our nation's transportation program and with the expiration of authorizations from the 1982 Surface Transportation Assistance Act, it has become most important that a reauthorization bill be passed before October 1, 1986.

We have reviewed the draft bill (S.2405) introduced by you and other members of the committee. Your efforts to develop a comprehensive piece of legislation that is forward looking are quite obvious. I would like to comment on several factors that are of concern to Georgia.

The first and most important concerns funding levels. Although the present national budget and deficit situation makes it difficult to talk of increased funding levels, I feel that the Federal-Aid Highway Program is one area that should be looked at very closely as an exception. Because of the nature of highway projects, it requires three to five years to prepare them for construction. With the funding levels used in S.2405 it will not be possible for Georgia to prepare for construction roads needed in the last decade of this century. To compound the problem that we face in meeting our nation's highway needs is the fact that the Federal-Aid Highway Program has not caused nor participated in the deficit. In fact the irony of the situation is that the user of the highways has paid his taxes to have roads improved and the funds are now being used to bail out other programs which were not fiscally sound. We have just completed an update of Georgia's Twenty Year Transportation Plan (Highway Element) and, even with full Federal Highway Program funding, have a $13-$18 billion deficit. Unless a higher level of authorizations more closely matching the receipts to the trust fund can be achieved, I feel that we should forego multi-year legislation this year. We feel that if the Federal Highway Program cannot use the revenues generated by the Federal fuel tax then the taxes should be reduced to the program level.

The combined Interstate/Primary Program is an innovative step toward addressing the transition from Interstate construction to support of the nation's economic goals thru the highway program. However, we are particularly concerned that applying the restrictions of Section 119 will cost the very flexibility that the Committee has sought to provide. In Section 119, the new Section 159 of Title 23 requires that the Federal Highway Administration conclude that all gaps are completed on a state's Interstate and all necessary and appropriate reconstruction, rehabilitation, restoration and resurfacing on existing highway facilities has been completed prior to utilization of the funds for construction. Because of the workings of the Federal-Aid Highway Program, we have found such a restriction to be most difficult to satisfy, from a bureaucratic standpoint, and thus our concern that the administrative procedures could frustrate the intent of the program.

Third, the toll provision urgently needs modernization and updating to meet the needs of the late 20th Century. With the Federal-Aid Program only able to reach $12.45 billion of the $24 to $26 billion in Federal needs, it is quite inappropriate to tell states that they cannot satisfy their needs with toll facilities where such are financially appropriate. Reports by both the Congressional Budget Office and General Accounting Office have indicated that toll financing is a very important option that should be available to the states so that transportation facilities can be provided which save lives and make travel more economical.

These three major areas present significant problems to Georgia and we would like to work with you and your committee staff in seeking ways to address these concerns. We continue to be most anxious that a bill be passed - in a timely manner - for we fear that failure to fulfill the Federal side of the highway bargain will cost all of us public support for going forward with the program.

We appreciate the opportunity to provide you these comments and we would like to have them added to the record for S.2405.

Yours very truly,

Thomas D. Moreland

TDM:dc

cc: Senator Mack Mattingly
Senator Sam Nunn

STATE OF IDAHO

JOHN V EVANS
GOVERNOR
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E. DEAN TISDALE
DIRECTOR

TRANSPORTATION DEPARTMENT

PO BOX 7129 BOISE, IDAHO 83707

June 6, 1986

The Honorable Steve Symms
Chairman, Senate Sub-Committee on Transportation
Committee on Environment and Public Works
509 Senate Hart Building
Washington, D.C. 20510

Dear Senator Symms:

Please include this letter in the record of testimony for Senate Bill 2405.

I extend my compliments to you and your colleagues for the excellence of S. 2405 in its response to highway needs and our appreciation of your efforts to enact highway legislation prior to October 1, 1986.

In general, S. 2405 addresses all of the major concerns of the Idaho Transportation Department and should provide greater flexibility and a more equitable program among the States considering their divergent needs.

We do have a major concern with regard to combining Interstate Completion with the Interstate Rehabilitation and primary programs. This could cause interstate completion priority problems. We recommend that consideration be given to expressing the intent of Congress in the bill that the uncompleted segments of interstate having right of way acquired by 1990 shall be funded for construction with interstate designated funds.

We support the land area factor in the apportionment section of S. 2405. It is needed for states that have large federally owned land areas. States have to construct and maintain highways through these lands that are set aside for national public use or benefit. These land areas cannot generate a tax base or population of vehicles accessable to state road use taxation. The G.A.O. report, GAO/RCED-86-114, March 1986, to Senator Chiles on highway funding distribution formulas, objects to land area as a formula factor because the highway system is no longer growing at a dramatic pace. The G.A.O. report does not address the federal lands problem in its discussion or the fact that Public Lands or Forest Highways funding is insufficient if the land area formula factor is eliminated from the Federal-aid apportionment.

continued...

The Honorable Steve Symms
June 6, 1986
Page 2

The prohibition of state reports identifying safety hazards being used as evidence against the State in tort liability is a major benefit to the highway safety improvement system.

Very truly yours,

Dean Tisdale

E. DEAN TISDALE
Director

EDT:ks

cc: Representative Stallings
Representative Craig
Senator McClure

Richard F. Celeste/Governor
OHIO DEPARTMENT OF TRANSPORTATION
25 South Front Street
P.O. Box 899
Columbus, Ohio 43216-0899

June 3, 1986

Honorable John H. Glenn
United States Senate
Senate Office Building
Washington, D. C. 20510

Re: Proposed Federal-Aid Highway Programs

Dear Senator Glenn:

It is extremely important to Ohio that the federal-aid highway program be reauthorized to permit its uninterrupted continuation into the next year and beyond.

Highway needs are great. There is an ever increasing backlog of bridge and roadway work to restore surface transportation to an adequate level to serve America's economic development. In addition, new highway segments should be provided to accommodate our travel needs. The funding level for the federal-aid highway program should be as great as permitted and maintain the integrity of the highway trust fund. In any event, the funding level should at least equal the amount flowing into the trust fund including the earned interest. The funding elvels of S. 2405 fall well short of this level.

Ohio can certainly function with a combined Interstate 4R and primary program. In fact, this would provide flexibility to direct resources to the areas of greatest need. However, we would strongly suggest that the Interstate completion program maintain its separate identity to continue emphasis on this very significant portion of the highway system. The Interstate highway system must be completed.

The nation's bridges, including Ohio's, at all system levels, local and state, require our concerted attention. Travel that is essential for commerce and the economy is severely disrupted when highway travel must detour around closed or load restricted bridges. The bridge program should be funded to the maximum possible extent. Preferably, it should be doubled over that proposed by S. 2405.

Recently, Ohio's highway program has been greatly benefitted through the 85% Minimum Allocation section of the federal-aid highway program. Our yearly allocations have been increased by many million dollars due to the 85% Minimum Allocation provisions. Not only is it critical for this section to continue, it is the only fair approach to an otherwise completely unfair situation. Any state, including Ohio, should get back at least 85% of the funds it contributes to the Trust Fund. It should be made a permanent part of the federal-aid highway program. States should have maximum flexibility in utilizing the 85% Minimum Allocation funds on programs as determined by the state.

The nation's major highway systems, especially the Interstate routes, are essential to our economic and social well-being. Therefore, it should certainly be acceptable to develop some combination of funding utilizing tolls as well as user revenues. There, no doubt, will never be sufficient funding available to satisfy all of the nation's travel desires. Therefore, we must use all possible funding options to the degree available and workable. There should be provisions to eventually remove the tolls if adequate funding becomes available.

It still appears necessary to provide special encouragement for Disadvantaged Business Enterprises. Given this, provisions similar to those proposed in S. 2405 seem satisfactory and should be pursued.

The nation's highway systems and countryside should retain their natural and scenic characteristics. Therefore, the highway beautification section should be retained. A proliferation of signs certainly detracts from the aesthetics that should be available to the highway traveler. The federal-aid highway program should contain provisions for controlling installation of new signs and removing those that violate aesthetics for highway travelers.

The Buy America provisions tend to help this nation's producers when competing with foreign products and should be retained. The threshold suggested in S. 2405 appears reasonable.

Hopefully, these comments will be of assistance as Congress continues to work on the next federal-aid highway program. Two things are essential, a continuing uninterrupted program and an adequate level of funding.

Please advise if further comments are desired.

Very truly yours,

Warren

Warren J Smith
Director

WJS/bmk

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4000

MARILYN BORNHORST
CHAIR

May 16, 1986

Senator Robert T. Stafford
Chairman
Senate Committee on Environment & Public Works
133 Hart Senate Office Building
Washington, D.C. 20510

Re: Exemption of H-3 from Environmental Laws

Dear Senator Stafford:

I would like to be in Washington testifying in person on this very important issue, but this is the time of budget decisions and major land use decisions on our City Council and I can't be there.

I would like to urge you not to exempt H-3 from Federal laws. I believe these laws are reasonable and we should conform to them. Further, I don't believe H-3 is the best use of Federal transportation money for our Island. H-3 was planned when our direction of growth was in all directions. At that time, the second harbor was to be built on the side of the Island served by H-3. Since then, our entire direction of growth has officially changed toward the Leeward side of the Island where we have built a deep draft harbor using a great deal of Federal funds. The area of the new harbor is where our land use plans say we will direct our growth. I think that more and more of our citizens realize that we would all benefit by transferring the H-3 money to improve the entrances to H-1 and H-2, and to improve the transportation on the Leeward side of the Island where more growth is planned and is, indeed, happening.

As you know, there is always a great deal of pressure from construction lobbyists to build anything anywhere. In the past, there was probably a majority opinion on the Island in favor of building H-3. I believe this opinion has changed dramatically and will continue to change in favor of using this money for more appropriate and urgent transportation needs.

Senator Robert T. Stafford
May 16, 1986
Page 2

I believe if our State Constitution allowed referendum, the referendum would be in favor of transferring the money from H-3. In the absence of a referendum, I can only give you my judgment that there is, indeed, no majority opinion in favor of continuing to build this highway.

Sincerely,

Marilyn Bornhorst

MARILYN BORNHORST
CHAIR

mma

AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC.

GOVERNMENTAL AFFAIRS OFFICE
1629 K STREET NORTHWEST, SUITE 400
WASHINGTON, D.C. 20006
(202) 466-5548

STATEMENT FOR THE RECORD OF THE
AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC.
REGARDING
S.2405, THE FEDERAL-AID HIGHWAY ACT OF 1986

Submitted to the
Senate Subcommittee on Transportation
Senate Committee on Environment and Public Works

William Y. Epling
Vice President,
Government Affairs
American Institute of Steel
Construction, Inc.
1629 K Street, N.W.
Suite 400
Washington, D.C. 20006
(202)466-5548

June 10, 1986

Steel **STANDS** for the future

STATEMENT FOR THE RECORD OF

THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION

The American Institute of Steel Construction (AISC) is pleased to submit this statement for the record in connection with the hearings on S.2405, the Federal-Aid Highway Act of 1986. AISC's statement will focus on the critical need for a sound Buy American provivion to protect the fabricated structural steel industry during the five year period of the President's Steel Import Restraint Program.

The statement provides background information on the AISC and the U.S. fabricated structural steel industry. Our statement then discusses the impact of the proposed Administration action to delete Buy American in the Surface Transportation Reauthorization Act of 1986. Finally our statement discusses the reasons why only a solid Buy American provision, as in the current Surface Transportation Assistance Act of 1982, will meet the nation's needs.

I. General Background

A. The American Institute of Steel Construction (AISC)

AISC, headquartered in Chicago, is a unique voluntary trade association uniting the fabricators of steel framed buildings, bridges and related structures. AISC also serves the erectors, designers and educators who have a professional interest in fabricated structural steel structures. AISC has three types of membership: Active, Associate, and Professional.

Active membership is open to companies that fabricate structural steel. Only firms headquartered in the U.S. are eligible. Active membership now totals 394 firms.

Associate membership is open to firms or individuals who sell a product or service related to steel construction (e.g., mill steel producers). Associate membership now totals 111.

Professional membership includes firms or individuals practicing as architects or engineers, or teaching either of these professions in a recognized college or university. Professional membership now totals 2,216.

In the early years of steel-framed construction, the growth of our industry was limited by the lack of standard design principles and descriptive product terminology. Producing mills each rolled different sections or shapes and each mill had its own weight load tables and product specifications. In many cases, these were inconsistent with the standards of other mills. This condition had existed for many years and was the fundamental reason the AISC was formed in 1921. The original objectives for the AISC were thus:

1. to establish a single standard construction manual recognized by building authorities and designers;

2. to establish a set of standard loading tables for all the sections rolled by the various mills; and

3. the establishment of an authority to foster the efficient use of steel that would be welcomed by the mills, engineering profession, architects, building officials and purchasers of steel.

AISC believes it has accomplished those objectives with distinction.

During recent years AISC's traditional strong emphasis on research and engineering has been expanded to encompass a wide range of educational, market research, and producer certification programs. We now have a full time staff of over 50 people and operate under an annual budget of $4.0 million.

Throughout its 65 year history, AISC has been highly engineering oriented with a strong emphasis on steel research and steel design techniques. ~~It~~ publishes many technical publications including the "bible" of the industry - the AISC Manual of Steel Construction - which contains the well known AISC cose of Standard Practice for Steel Buildings and Bridges and the AISC Specifications for the Design, Fabrication and Erection of Structural Steel for Buildings. These documents are the basis for most steel bridge and building designs and construction contracts in this country as well as in many other parts of the world.

In April 1983 we established a full time office in Washington, D.C. to pursue the fabricated structural steel indutry's interests before the Congress, the various federal agencies and with related or allied trade associations.

B. The U.S. Fabricated Structural Steel Industry

The principal products of the fabricated structural steel industry are steel building frames, bridges and related structures. The leading alternative construction material for these applications is reinforced concrete, which is also widely used throughout the United States. The choice between steel and concrete reflects to a large degree the particular engineering features of each structure, but price is also a major determining factor.

The structural steel fabricator plays a clearly defined and critically essential role in constructing a building or bridge. The fabricator works with the plans and specifications for the structure prepared by architects and engineers to determine the number and type of fabricated steel pieces that will be needed. Using steel shapes and plates purchased from the mill steel producers or steel service centers, the fabricator creates each of the required framing pieces. These fabricated structural steel parts are then properly grouped and transported to the construction site, where the building frame or bridge is assembled by an erecting company.

The U.S. fabricated structural steel industry consists of approximately 1,100 firms, which are typically closely held family businesses. We estimate that the industry now employs approximately 53,000 persons, primarily ironworkers who fabricate steel in our plants. In this sense fabricate means cut, bend, drill or punch, weld or bolt pieces of steel. These ironworkers are supported by estimators, draftsmen, and management personnel.

An industry employing 53,000 persons among 1,100 firms is an industry whose firms average 48 employees. Thus, the U.S. fabricated structural steel industry is a large group of small businesses.

Steel fabricating firms are independent from the mill steel producers, which themselves generally do not engage in the fabricated structural steel business. Mill steel producers such as Bethlehem Steel Corporation played a major role in steel fabrication until about 10 years ago but have now largely left our business. It is widely believed that the mills withdrew from fabricating because their labor structures rendered them non-competitive.

Bureau of Labor Statistics data show that employees of the fabricated structural steel industry earn a wage that is about two percent higher than the average industrial wage. About half of our workers are unionized.

Although the U.S. fabricated structural steel industry is separate from the mill or basic steel industry, the economics of the two are closely linked. The fabricated structural steel industry uses over five million tons of mill steel per year. As such it is a very important customer of the mill steel industry. Our total business volume is over $6 billion per year.

Approximately 55% of the cost of fabricated structural steel products is the price paid for mill steel. Thus, design economy in the amount of steel used and the unit cost of the mill steel affect our competitiveness with foreign fabricated structural steel and with concrete and other materials suitable for building and bridge construction.

II. Buy American

A. Buy American Provision of the Surface Transportation Assistance Act of 1982 (Current Law)

Section 165, P.L. 97-424 reads as follows:

"BUY AMERICA

Sec. 165. (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, unless steel, cement, and manufactured products used in such project are produced in the United States.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds -

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, that (A) the cost of components which are produced in the United States is more than 50 per centum of the cost of all components of the vehicle or equipment described in this paragraph, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States;

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum in the case of projects for the acquisition of rolling stock, and 25 per centum in the case of all other projects.

(c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1964, the Surface Transportation Assistance Act of 1978, or title 23, United States Code, which retricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
(e) Section 401 of the Surface Transportation Assistance Act of 1978 is repealed."

The net effect of this Buy American provision, is that 100% of the federally assisted steel bridges have been provided by domestic fabricators using domestic mill steel.

B. Administration's Proposal

The Administration's proposal (H.R. 4144, the Surface Transportation Reauthorization Act of 1986, and S. 2189, the Senate version of H.R. 4144) extends federal aid for four years for highways, bridges and mass transit. This proposal calls for outright repeal of the current Buy American provision that requires domestic mill steel and domestic fabricated structural steel.

C. Action by the Congress

a. The House Committee on Public Works and Transportation's Subcommittee on Surface Transportation has restored a sound Buy American provision in its draft of the highway bill (H.R. 3129).

b. The Senate Committee on Environment and Public Works' Transportation Subcommittee has restored in its bill, S.2405, a Buy American provision with a $500,000 threshold of applicability.

D. Critical Need for Retention of Buy American

1. It is required to be consistent with the President's Steel Import Restraint Program.

The Administration, with the support of the Congress, has in place a five-year Steel Import Restraint Program that runs through September 30, 1989. This program, while not yet meeting its target of limiting mill steel imports to 18.5% of U.S. consumption plus 1.7 million tons of semi-finished slabs or some 20.2% of total U.S. steel consumption, is nevertheless steadily reducing mill steel imports in absolute tons and as a percent of U.S. consumption.

AISC's position on the President's steel program follows: Starting with the Section 201 unfair trade case brought by Bethlehem Steel and the United Steelworkers, we have maintained that if mill steel imports were restrained it was essential that concurrent protection be provided fabricated structural steel. Our logic is that without concurrent protection our market would be the certain target of foreign mills and fabricators as an outlet for steel. The resulting surge of fabricated structural steel imports would virtually destroy the domestic fabricating industry for all but the smallest projects. A surge of fabricated structural steel imports would also frustrate the objective of constraining mill steel imports by greatly reducing the consumption of U.S. mill steel by U.S. fabricators.

Our position was fully accepted and fabricated structural steel, except offshore platforms (TSUSA Item No. 652.9700), is an integral part of the Administration's Voluntary Restraint Agreements (VRAs) for steel. We are very pleased with the protection provided fabricators under the VRA program itself. We are, however, seriously concerned over the rapidly increasing exports of fabricated structural steel from non-VRA countries such as Canada, Singapore and Taiwan.

We now see countries, such as Singapore and Taiwan, with essentially no prior record of exporting fabricated structural steel to the U.S. surging into our markets in a significant way. We enjoy an advantage in "early warning" of fabricated structural steel imports because it is primarily marketed through construction contracts. Thus we often learn through the construction contract bid and award process when foreign fabricators are involved. This "early warning" is well before the fabricated structural steel is imported and has enabled us to document the surge by Singapore and Taiwan.

Canada is also rapidly increasing its exports of fabricated structural steel to the U.S. 1985 increased 67% over 1984 to an all time record. The first quarter of 1986 has increased 25% over 1985.

The bottom line for fabricators is that while the overall Steel Import Restraint program is working for mill steel (and is getting better as time goes on), it is not working for fabricated structural steel (and clearly is getting worse as time goes on). Comparing 1984 to 1985, aggregate imports of fabricated structural steel increased 27%. The increase from 1983 to 1985 was 74% (203,312 tons to 354,001 tons).

The problem, in short, is that non-VRA countries are frustrating the objective of concurrently protecting the fabricated structural steel industry while restraining mill steel imports.

The solution is to extend the VRAs to the non-VRA countries or otherwise restrain them to their traditional market shares.

Recent action by the Department of Commerce advising all VRA countries of its intention to enforce provisions with respect to third country processing of steel from arrangement countries which is destined for the U.S. is helpful. But it seems unlikely that this approach alone will adequately restrain Canada and other non-VRA countries.

Notwithstanding the adequacy of the President's program, it is totally inconsistent with the objectives of the program to take any steps whose net effect will be to enhance further mill steel or fabricated structural steel imports. Deleting Buy American will expose the federally assisted bridge program to irresistable assault by foreign fabricators. While the 28 countries covered by VRAs are somewhat limited by their VRAs in their ability to surge into the steel market, the non-VRA countries are not restrained.

AISC's analysis of non-federally assited steel bridge construction contract bids and awards leads us to the clear conclusion that foreign fabricators can take all of the steel bridge program that is open to them.

It seems likely that VRA countries will use their available fabricated structural steel quotas for bridge work (more complex fabrication with higher man-hours and dollars per ton).

It further seems certain that, given the opportunity, non-VRA countries will surge into U.S. steel bridge market. Given the tenuous economic health of bridge fabricators this could lead to the virtual collapse of the U.S. capacity for major steel bridge construction.

2. It Makes Economic Sense

It is estimated that over one million tons of steel is used annually for highway and mass transit projects. Of this amount some 600,000 tons is used for bridges. When this tonnage is produced and fabricated by American workers, jobs are created, revenues are generated and taxes are recovered. Studies show through the so called multiplier effect that nearly 50% of these funds are recaptured through federal, state and local taxes.

3. It Should Apply Without a Threshold for Applicability

AISC applauds action thus far by the House and Senate committees to restore Buy American. However, the Senate Transportation Subcommittee's $500,000 threshold of applicability is seriously flawed. We note that about 60% of all federally assisted highway construction contracts are for $500,000 or less. Thus this threshold will eliminate a very substantial portion of the fabricated structural steel work for smaller bridges - both new work and rehabilitation. It is just this type of work that is so critical to the economic survival of the vast majority of fabricators who are largely small businesses.

AISC, accordingly, strongly urges that the $500,000 threshold of applicability for Buy American be deleted.

Conclusion

A sound Buy American provision on the federally assisted highway program is needed to:

1. be consistent with the President's Steel Import Restraint Program;
2. make economic sense in terms of employment in steel mills and the fabricated structural steel industry, revenues generated and taxes recovered; and
3. apply without a $500,000 threshold of applicability in order to cover coherently the bridge and highway programs.

AISC strongly urges a sound Buy American provision with full applicability to all mill steel and fabricated structural steel.

STATEMENT OF AMERICAN IRON AND STEEL INSTITUTE

TO

THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON TRANSPORTATION
ON
S. 2405

JUNE 10, 1986

The American Iron and Steel Institute (AISI), on behalf of its domestic member companies has the following comments on S. 2405. The AISI supports the inclusion of the strongest possible Buy American provision in S. 2405.

AISI was a strong supporter of the Buy American provision contained in the Surface Transportation Assistance Act (STAA) of 1982. Our support was based largely on the simple proposition that if the U.S. government was going to impose additional taxes on its citizens, the corresponding benefits -- in terms of jobs created -- should also accrue to U.S. citizens.

For this same reason, AISI supports the inclusion of Buy American in S. 2405, but opposes the provision which would impose a minimum threshold for the applicability of Buy American. In that regard it would be useful to review what happened to the STAA of 1982 legislation. Following the STAA of 1982 becoming law, we supported efforts to eliminate from the Department of Transportation's (DOT) original interim regulations the proposed $450,000 minimum threshold of applicability for the Buy American provision. According to DOT data, 60% of the contracts which would otherwise be covered by Buy American, and 10% of the value of the contracts under the STAA were less than $450,000. Therefore, 10% of the total dollars spent by DOT for the highway and bridge program would be outside the purview of the Buy American provision if the regulation had been allowed to stand -- approximately 1.1 billion dollars per year and 140,000 tons of steel (using DOT's official steel usage data). We, along with steel construction firms and others supporting our position, were successful in reversing DOT's position on this issue.

Presently, Buy American applies on all DOT highway and bridge contracts. With regard to the S. 2405 minimum threshold for applicability of Buy American, the data are now even more compelling. DOT highway and bridge construction contracts in 1984 were 17.1 billion dollars compared to 11.1 billion dollars in FY 1981, prior to the passage of the STAA of 1982. Thus, if we use the same estimate, i.e., that 10% of the contract dollars would be uncovered by the STAA Buy American provision if the bill were passed in its current form, 1.7 billion dollars and nearly 210,000 tons of steel would not be covered by the Buy American provision.

The STAA of 1982 Buy American provision has worked extremely well, notwithstanding DOT's original concerns that the lack of a threshold for the Buy American provision would result in increased bureaucractic problems. In fact, our members have never heard of any instance where federal, state, or local officials have had problems enforcing the Buy American provision -- even on the small contracts.

As a result of the Federal Highway and Bridge Program and the Buy American provision contained in the STAA of 1982, the U.S. steel industry has benefited. Approximately 2.0 million tons of steel per year are procured under the STAA of 1982. As a result of this procurement, nearly 6,000 U.S. steelworkers are employed each year; and with the steel industry struggling to modernize and upgrade its facilities and return to profitability, every ton produced for this market is important to us. And we believe it is important to note that without the current Buy American language many of these jobs would be in serious jeopardy -- along with the taxes that are paid and the other jobs in the communities which are dependent on the steel industry.

We urge the subcommittee to pass the Buy American provision in S. 2405, but without the $500,000 minimum threshold for Buy American.

American Public Transit Association
1225 Connecticut Avenue, N.W.
Washington, DC 20036
Phone (202)828-2800

APTA

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Carmen E. Turner, Rail Transit

May 29, 1986

The Honorable Robert T. Stafford
Chairman
Committee on Environment and
  Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

As the Committee on Environment and Public Works considers S. 2405 to reauthorize the federal highway aid program, the American Public Transit Association (APTA) wishes to express its strong opposition to Section 129, calling for a so-called minimum allocation" of the Mass Transit Account of the Highway Trust Fund.

As the national association whose member transit systems carry 95 percent of U.S. transit riders, we ask that Section 129 be deleted and that decisions affecting the future of the Mass Transit Account be left to the Senate Banking Committee where transit authorization legislation is under consideration.

The Urban Mass Transportation Act was carefully-crafted by Congress to assure that the bulk of grants are available to recipients on a formula basis. Today, nearly 60 percent of all federal transit aid is distributed equitably through UMTA's Section 9 and 18 formula grants programs.

The Discretionary Capital Program, funded by the transit penny of the Highway Trust Fund, was designed by Congress to meet extraordinary needs which are beyond the funding ability of the formula program. These needs include major modernization programs, big bus purchases, new starts and extensions. Any change to the fundamental structure of the mass transit program cannot be contemplated in isolation; its potential effect on related elements of the program must be taken into account.

The Honorable Robert T. Stafford
May 29, 1986
Page 2

The call for an 85 percent minimum turnback of transit revenues is in itself unfair. A numerical guarantee bears no relationship to need, the best measure of fairness. Mass transit capital needs in this nation are estimated to approach nearly $8 billion annually, far in excess of resources available from users and all levels of governments. Any attempt to deny transit more than a billion dollars in annual revenue paid in good faith by taxpayers is something we will oppose with all our might.

We support a balanced transportation investment in our nation's infrastructure. Section 129 of S. 2405 would destroy that by assuring an unnecessary windfall of funds for some areas at the expense of others.

May we count on your support to delete Section 129 from the bill?

Sincerely,

Jack R. Gilstrap

Jack R. Gilstrap cg

ASSOCIATION
OF AMERICAN
RAILROADS

William H. Dempsey
President

May 27, 1986

Honorable Steven D. Symms
Chairman
Subcommittee on Transportation
Committee on Environment and
  Public Works
United States Senate
Washington, D. C. 20510

Dear Senator Symms:

I was extremely pleased to notice your recent introduction of the Federal-Aid Highway Act of 1986 (S.2405), and the prompt hearing on that legislation by the Subcommittee on Transportation. I would like to take this opportunity to express the views of the Association of American Railroads and its members regarding S. 2405 in the hope that they will be considered in your legislative deliberations and included as a part of the official record of the Subcommittee on Transportation's May 20, 1986, hearing.

Let me first emphasize the importance of timely enactment of a multi-year reauthorization of the Federal-Aid Highway Program. The orderly and efficient implementation of important highway and highway safety programs depends upon the ability of Federal, state, and local government, and other essentially involved concerns, such as the construction and railroad industries, to properly plan and allocate necessary manpower and other resources. This can only be accomplished within the framework of a predictable, ongoing Federal-Aid Highway Program. With this consideration clearly in mind, I would urge timely enactment of multi-year highway reauthorization legislation, certainly by October 1, 1986.

As you will recall, I had the opportunity to testify before the Subcommittee on Transportation on July 11, 1985, regarding the future of the Federal-Aid Highway Program. At that time, I emphasized the importance and tremendous accomplishments of the Federal-Aid Highway-Railroad Grade Crossing Improvement Program (Section 203 Program) in improving grade crossing safety on public highways and streets throughout this country. I have taken the liberty of enclosing with these comments pertinent, updated tables and charts as clear evidence of the continuing success of the Section 203 Program in reducing grade crossing accidents and casualties. Specifically, I would draw attention to the fact that fatalities at public grade crossings during 1985 were the fewest on record, and represented a reduction of 58 percent since the beginning of the Section 203 Program in 1974. In light of this demonstrated success, I was extremely pleased to note that section 102 of S. 2405 contains a four year reauthorization of the Section 203 Program.

50 F Street, N.W., Washington, D.C. 20001 (202) 639-2402

While the reauthorization of the Section 203 Program is of the greatest importance, I am concerned that S. 2405 contains a reduction in annual authorized funding for this program, from $190 million to $175 million. The average annual obligation rate of Section 203 funds clearly indicates a level of grade crossing improvement needs and a commitment on the part of state highway agencies and the railroad industry in excess of the proposed $175 million. Since fiscal year 1979, when the Section 203 Program was initially authorized at $190 million, the average annual level of Section 203 obligations has been nearly $180 million. Even more importantly, since the Section 203 Program was reauthorized at $190 million in the Surface Transportation Assistance Act of 1982, the average annual rate of Section 203 obligations has been approximately $192 million. Through this first six months of fiscal year 1986, the rate of Section 203 obligation indicates that the total amount of obligations for the present year will be between $185 and $190 million. The obvious commitment, level of effort, and resulting success of the Section 203 Program over the years would seem to unequivocally justify and warrant continued full funding of $190 million. Importantly, the U. S. Department of Transportation clearly shares this view. Despite its vigorous efforts to generally restrain Federal domestic spending, the Reagan Administration's Federal-Aid Highway Program reauthorization proposal contains full $190 million funding for the Section 203 Program. In my opinion, demonstrated effective public safety efforts, with dedicated financial resources, should be held separate and immune from necessary attempts to solve wholly unrelated, although important, extraneous problems, such as general revenue deficit reduction.

In my July 11, 1985, testimony before the Subcommittee on Transportation, I also pointed out the adverse effect on Section 203 Program implementation resulting from the inappropriate use in court of certain grade crossing hazard information and reports. I was extremely pleased to note the provisions in section 126 of S. 2405 prohibiting the use of such data and materials in litigation. This prohibition will certainly result in a more effective implementation of the Section 203 Program, and, consequently, increased grade crossing safety.

I noted with regret that S. 2405 contains no provisions calling for an updated national grade crossing needs study. As I discussed last July before the Subcommittee, tremendous accomplishments have been achieved under the Section 203 Program since 1974, and there have been substantial physical and operational changes in rail and highway transportation since the initial national grade crossing needs study was conducted in 1971-1972. These accomplishments and changes obviously impact present and future grade crossing needs. In order to most effectively address grade crossing safety, it is important that Congress provide for a comprehensive, updated study and investigation of national highway-railroad crossing improvement and maintenance needs.

I would point out that the Federal Highway Administration shares AAR's desire for an updated national needs study. In testimony before the

House Transportation Appropriations Subcommittee earlier this year, the FHWA testified as follows regarding such a study:

> "There have been substantial program accomplishments since the last needs study. Also changing patterns in rail and highway traffic movements, changing technology, and recently emerging issues indicate the need to update the previous study through utilization of the current national inventory, state, railroad, and other available records to reflect these changes. We would support such an update effort."

In light of the above, I would respectfully urge the Subcommittee to reconsider and add appropriate language to S. 2405 providing for an updated national highway-railroad crossing needs study.

Finally, a serious problem in the overall effort to improve grade crossing safety has recently developed which, I believe, should be brought to the Subcommittee's attention, and for which I have a possible solution. While the Section 203 Program can and does provide properly engineered grade crossings, through the installation of appropriate warning devices, smooth surface treatment, desirable highway-railroad geometrics, and a variety of additional engineering improvements, as long as motor vehicle operators frequently do not understand and heed the important message of warning devices, and generally refuse to exercise due caution at highway-railroad grade crossings the grade crossing safety problem will persist. As an example of the magnitude of this problem, in 1985, preliminary statistics indicate that over 52 percent of the 6,090 grade crossing accidents occurred at grade crossing locations with either appropriately operating active warning devices or railroad flagmen.

A national program designed to improve driver education and safety enforcement at grade crossings, known as Operation Lifesaver, has been increasingly effective in combating this difficult problem. The National Safety Council is responsible for coordinating the Operation Lifesaver effort among the various states, and for providing material development and production, and technical assistance. The NSC Operation Lifesaver effort has been supported by year-to-year financial contributions from several sources. The level of these contributions often varies substantially from one year to another. In order for NSC to properly and effectively plan and implement the National Operation Lifesaver Program a reliable, long-term base of financial support must exist, which could then be supplemented by the other financial contributions, such as that which has historically been provided by the railroad industry through the AAR. If such a source of reliable, long-term funding is not developed the National Safety Council has indicated its desire to cease further involvement in Operation Lifesaver. This would be a serious blow to the overall grade crossing safety effort.

It would seem desirable and entirely appropriate that a portion of the Section 203 funding serve as the financial base for Operation Lifesaver. The Operation Lifesaver effort is essential in insuring the effectiveness of the improvements made under the Section 203 Program. It is consequently sensible that they be similarly funded. This can be accomplished with negligible impact on the Section 203 Program. A National Operation Lifesaver Program should be authorized to develop and implement cooperative efforts between the states, railroads, community groups, and other public service and safety groups to reduce accidents at highway-railroad grade crossings through increased driver education and safety awareness programs and enhanced traffic law enforcement efforts. Prior to apportionment, approximately $250,000 should annually be deducted from authorized Section 203 funding and made available by the Secretary of Transportation as a grant to, or by entering into a coopertive agreement with the National Safety Council to conduct the National Operation Lifesaver Program. Under such an arrangement the annual reduction in Section 203 funding would range between approximately $16,500 for Texas ($12.6 million annual Section 203 apportionment), and $700 for Rhode Island ($530,000 annual Section 203 apportionment). The benefits from a continuing, effective Operation Lifesaver Program would far outweigh such a relatively insignificant loss of Section 203 funds. I urge your most serious consideration of this proposal. The effective continuation of a coordinated national Operation Lifesaver effort is of tremendous importance to grade crossing safety.

I hope these views and comments on behalf of the AAR member railroads will be of assistance to the Subcommittee in its important work. Please don't hesitate to contact me whenever I can be of aid.

Sincerely,

W. H. Dempsey

W. H. Dempsey

HIGHWAY-RAILROAD MOTOR VEHICLE FATALITIES AT PUBLIC CROSSINGS

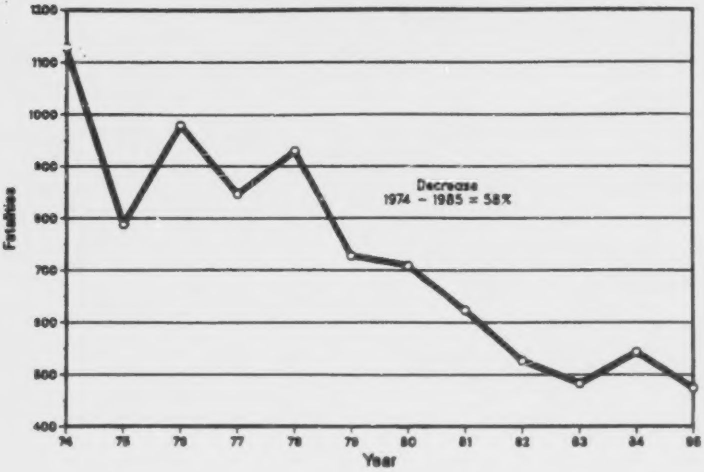


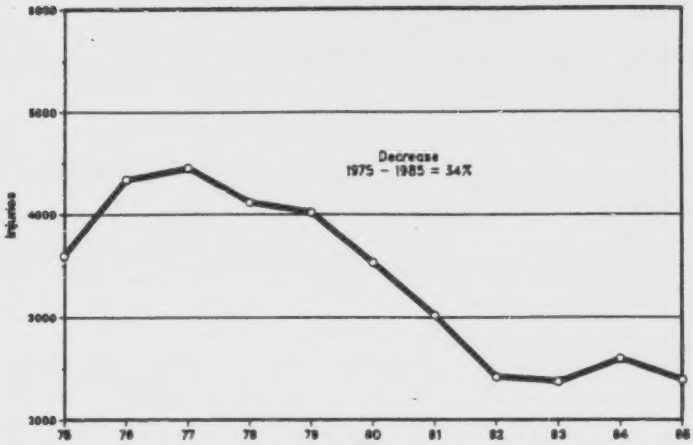
TABLE 1

HIGHWAY-RAILROAD MOTOR VEHICLE FATALITIES AT PUBLIC CROSSINGS

YEAR		FATALITIES
1974		1,128
1975		788
1976	58%	978
1977	Decrease	846
1978		929
1979		727
1980		708
1981		623
1982		526
1983		483
1984		543
1985		474 (preliminary)

SOURCE: FRA Rail-Highway Crossing Accident/Incident and Inventory Bulletin.

HIGHWAY-RAILROAD MOTOR VEHICLE INJURIES AT PUBLIC CROSSINGS



Note: 1974 Not Shown Due To Change In FRA Reporting Criteria.

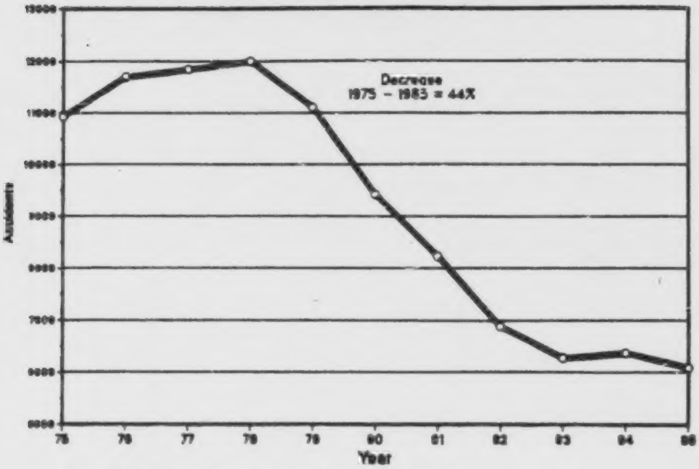
TABLE 2

HIGHWAY-RAILROAD MOTOR VEHICLE
INJURIES
AT PUBLIC CROSSINGS

YEAR		INJURIES
1975		3,600
1976		4,343
1977	34%	4,455
1978	Decrease	4,120
1979		4,019
1980		3,534
1981		3,020
1982		2,417
1983		2,372
1984		2,597
1985	↓	2,391 (preliminary)

SOURCE: FRA Rail-Highway Crossing Accident/
Incident and Inventory Bulletin.

HIGHWAY-RAILROAD MOTOR VEHICLE ACCIDENTS AT PUBLIC CROSSINGS



Note: 1974 Not Shown Due To Change In FRA Reporting Criteria.

TABLE 3

HIGHWAY-RAILROAD MOTOR VEHICLE
ACCIDENTS
AT PUBLIC CROSSINGS

YEAR		ACCIDENTS
1975		10,925
1976		11,700
1977	44%	11,849
1978	Decrease	11,999
1979		11,108
1980		9,422
1981		8,232
1982		6,882
1983		6,272
1984		6,370
1985		6,090 (preliminary)

SOURCE: FRA Rail-Highway Crossing Accident/ Incident and Inventory Bulletin.

TABLE 4

FREIGHT AND PASSENGER
TRAIN MILES

YEAR		TRAIN MILES
1974		534,039,763
1975		468,321,148
1976		491,057,525
1977	27%	493,890,675
1978	Decrease	497,134,000
1979		499,514,000
1980		488,948,812
1981		*467,614,668
1982		*401,374,432
1983		*388,534,905
1984		*411,070,321
1985	↓	*389,802,175

SOURCE: AAR Statistics of Railroads of Class I.
*ICC R-1 Report, Schedule 755, Line 9 for 1981 and Line 7 for 1982 - 1985.
(Includes Amtrak and Long Island Railroad)

TABLE 5

ALL RURAL AND URBAN ROADS/SYSTEMS
VEHICLE MILES

YEAR		VEHICLE MILES (MILLIONS)
1974	↑	1,282,790
1975		1,330,074
1976	38%	1,409,163
1977	Increase	1,466,000
1978		1,548,231
1979		1,529,133
1980		1,520,857
1981		1,553,969
1982		1,592,000
1983		1,650,000
1984		1,726,686
1985		1,765,180

SOURCE: FHWA "Highway Statistics", Highway Statistics Division, Office of Highway Planning.

POTENTIAL EXPOSURE AT
HIGHWAY-RAILROAD CROSSINGS

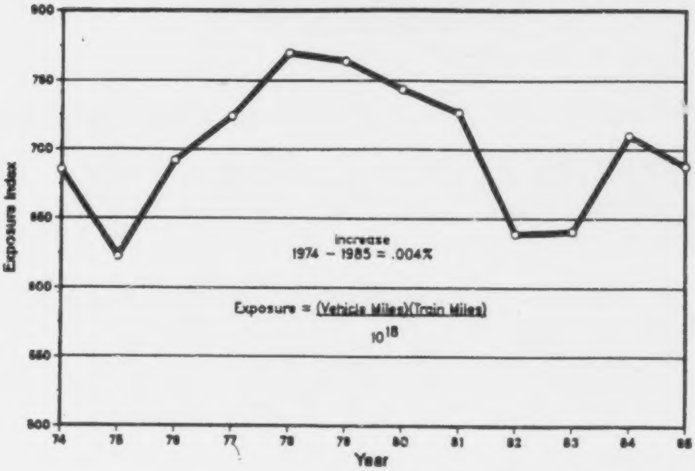


TABLE 6

POTENTIAL EXPOSURE AT
HIGHWAY-RAILROAD CROSSINGS

YEAR		EXPOSURE INDEX
1974	↑	685.06
1975		622.90
1976	.004%	691.98
1977	Increase	724.04
1978		769.68
1979		763.82
1980		743.62
1981		726.66
1982		638.99
1983		640.74
1984		709.79
1985		688.07

$$\text{EXPOSURE INDEX} = \frac{\text{(VEHICLE MILES) (TRAIN MILES)}}{10^{18}}$$

ALL HIGHWAY MOTOR VEHICLE FATALITIES

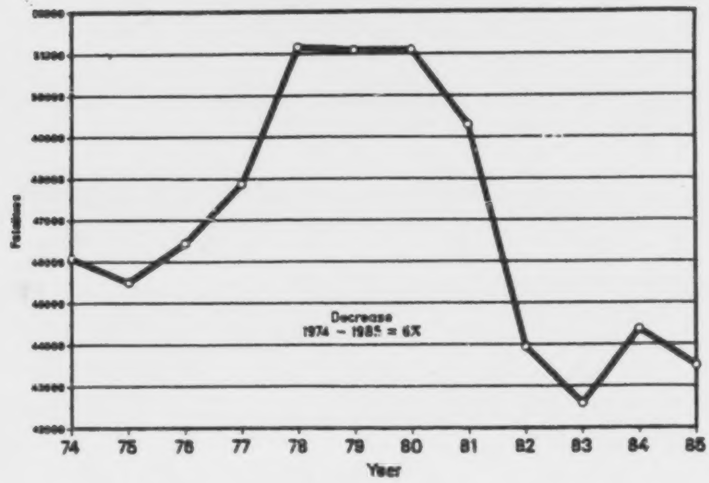


TABLE 7

ALL HIGHWAY MOTOR VEHICLE FATALITIES

YEAR		FATALITIES
1974		46,078
1975		45,500
1976	6%	46,434
1977	Decrease	47,868
1978		51,153
1979		51,083
1980		51,091
1981		49,301
1982		43,947
1983		42,596
1984		44,372
1985	↓	43,500 (preliminary)

SOURCE: FHWA "Fatal and Injury Accident Rates", Accident Analysis Division, Office of Highway Safety

INDEXED RATIO
OF EXPOSURE AND
FATALITIES, INJURIES AND ACCIDENTS

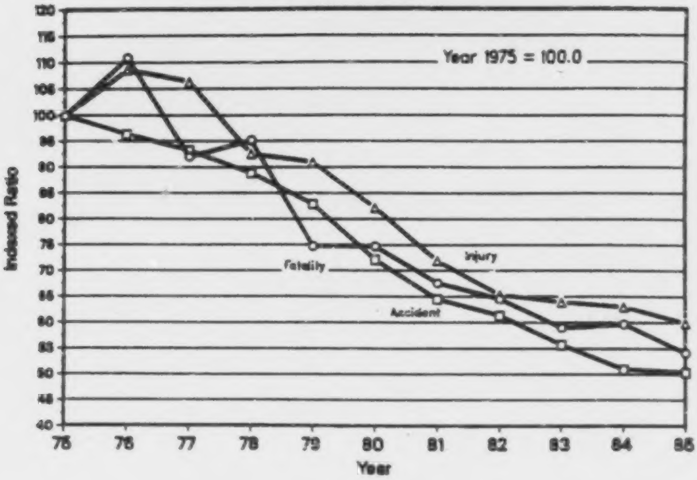


TABLE 8

RATIO AND INDEX
OF EXPOSURE AND
FATALITIES, INJURIES AND ACCIDENTS
INVOLVING MOTOR VEHICLES AT
PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

	FATALITIES/EXPOSURE		INJURIES/EXPOSURE		ACCIDENTS/EXPOSURE	
YEAR	RATIO	INDEX	RATIO	INDEX	RATIO	INDEX
# 1975	1.27	100.0	5.78	100.0	17.54	100.0
1976	1.41	111.0	6.28	108.7	16.91	96.4
1977	1.17	92.1	6.15	106.4	16.37	93.3
1978	1.21	95.3	5.35	92.6	15.59	88.9
1979	0.95	74.8	5.26	91.0	14.54	82.9
1980	0.95	74.8	4.75	82.2	12.67	72.2
1981	0.86	67.7	4.16	72.0	11.33	64.6
1982	0.82	64.6	3.78	65.4	10.77	61.4
1983	0.75	59.1	3.70	64.0	9.79	55.8
1984	0.77	59.8	3.66	63.1	8.97	51.1
1985	0.69	54.3	3.47	60.0	8.85	50.5

# Base Year

$$\text{Annual Ratio} = \frac{\text{Annual Fatalities, Injuries or Accidents}}{\text{Annual Exposure Index (Table 6)}}$$

$$\text{Annual Index} = 100 \times \frac{\text{Annual Ratio}}{\text{Base Year Ratio}}$$

The League of Women Voters in Hawaii

STATE & ED FUND
49 S. HOTEL #314
HONOLULU, HAWAII 96813
PHONE (808) 531-7448

HONOLULU
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HAWAII COUNTY
P.O. BOX 665
HILO, HAWAII 96720

KAUAI
P.O. BOX 279
KOLOA, HAWAII 96756

May 20, 1986

The Honorable Robert T Stafford
Chair, Senate Committee on Environment
and Public Works
United States Senate
Room 410 Dirksen
Washington, D.C. 20510

Dear Senator Stafford:

In November of 1985, the League of Women Voters of Hawaii and the League of Women Voters of the United States presented our view on the possibility of exempting the Oahu (Hawaii) H-3 highway from federal environmental regulations.

Our opposition to such an exemption is not based on the merits, or lack thereof, of the highway. Rather, it is based on our belief that individual projects should not be exempted from federal environmental regulations by specific acts of Congress. The League believes that transportation planning and construction should weigh all social and environmental costs.

The League of Women Voters of Hawaii urges you to make certain that no such exemption is placed in any legislation which you are now considering. Such an exemption would set a very dangerous precedent.

Please find enclosed a copy of the November 8, 1985 Memorandum. We hope you will take into account all the points which were made then once again.

Sincerely yours,

Anne F. Lee
President, LWV of Hawaii

Membership in the League is open to all citizens, men and women, 18 years and over

League of Women Voters
of the United States

Memorandum

1730 M Street, NW
Washington, DC 20036
(202) 429-1965

November 8, 1985

TO: Members of the Senate Committee on Environment and Public Works

FROM: Dorothy S. Ridings, President, League of Women Voters of the United States and Anne F. Lee, President, League of Women Voters of Hawaii

RE: The H-3 Highway Extension in Hawaii, S. 1796.

The League of Women Voters of the United States and the League of Women Voters of Hawaii oppose the passage of S. 1796, a bill that exempts an extension of the H-3 highway on the island of Oahu from federal environmental regulations. Our strong opposition is not based on the merits, or lack thereof, of the highway. It is based on our belief that individual projects should not be exempted from federal environmental regulations by specific acts of Congress. The League believes that transportation planning and construction should weigh all social and environmental costs. S. 1796 would undermine this process.

If passed, this bill would set a dangerous precedent. We believe that it is not in the best interest of the country or the Congress for a legislative body to act to bypass laws enacted to protect the public health and the environment. Even in a case where there is a pressing national interest, this would be a serious step. In a case such as this, where there is no pressing national interest in the H-3 highway extension, an exemption is totally unwarranted.

Passage of S. 1796, even at the subcommittee level, could encourage many others to deluge the committee and the Congress with requests for special exemptions. Anyone who lost in court, after receiving due process and fair treatment, could turn to Congress for special favors. If individuals find the regulations and standards of environmental laws problematic, we believe the proper course for these individuals is to seek changes in the law. We do not find these regulations problematic and believe they will be rendered useless if special exemptions are given by Congress. Special exemptions make a mockery of the legislative process and can only result in laws devoid of substance. We urge you to oppose this bill.

IBTTA INTERNATIONAL BRIDGE, TUNNEL & TURNPIKE ASSOCIATION
2120 L ST., N.W., SUITE 305
WASHINGTON, D.C. 20037

Area Code (202) 659-4620
Cable: Intertoll Washington, D.C.

JOHN J. HASSETT
Executive Director

OFFICERS
President
JOSE LUIS CERON
Asociacion de Sociedades Espanolas Concesionarias de Autopistas, Tuneles, Puentes y Vias de Peaje (ASETA)
Madrid, Spain

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Delaware River Port Authority
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Republic of China

Immediate Past President
R.D. FOGO
Kansas Turnpike Authority
Wichita, Kansas

DIRECTORS
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Detroit, Michigan

YUICHI FUJISAWA
Nihon Doro Kodan
Tokyo, Japan

JOSEPH E. GREENE
Massachusetts Port Authority
Boston, Massachusetts

FRANCIS J. OTT
Burlington County Bridge Commission
Palmyra, New Jersey

GEORGE P. ZILOCCHI
New Jersey Highway Authority
Garden State Parkway
Woodbridge, New Jersey

•
HENRI CYNA
Compagnie Financiere et Industrielle des Autoroutes (COFIROUTE)
Paris, France

JAMES C. HARKINS
The Delaware River and Bay Authority
New Castle, Delaware

JEROME L. KAY
Halifax-Dartmouth Bridge Commission
Halifax, Nova Scotia, Canada

LEO J. TROMBATORE
California Department of Transportation
Sacramento, California

PAUL M. WECKESSER
New Jersey Turnpike Authority
New Brunswick, New Jersey

•
J.A. HIGGINS
The Cross-Harbour Tunnel Company, Ltd.
Hong Kong

EARL D. PIERSALL
Oklahoma Turnpike Authority
Oklahoma City, Oklahoma

JOHN B. RAMMING
Indiana Toll Road
Indiana Department of Highways
Granger, Indiana

GARY A. SMITH
Maryland Transportation Authority
Dundalk, Maryland

JAMES B. WILSON
Pennsylvania Turnpike Commission
Harrisburg, Pennsylvania

•
SERGIO de AMICIS
Associazione Italiana Societa Concessionarie Autostrade e Trafori (AISCAT)
Rome, Italy

JOHN T. DIAS
Massachusetts Turnpike Authority
Boston, Massachusetts

ALLAN V. JOHNSON
Ohio Turnpike Commission
Berea, Ohio

GEORGE A. McINTYRE
West Virginia Turnpike Commission
Charleston, West Virginia

JOSEPH L. VANACORE
The Port Authority of New York & New Jersey
New York, New York

June 6, 1986

Senator Steven D. Symms
Chairman, Subcommittee on Transportation
Senate Environment and Public Works
Committee
Washington, D.C. 20510

Dear Senator Symms:

The International Bridge, Tunnel and Turnpike Association, on behalf of a number of its Active members who operate toll roads in the United States, respectfully requests that the Subcommittee on Transportation amend Title 23 of the United States Code to give State and local governments the option of using Federal-aid highway funds on toll roads in the same manner that these funds are available for use in the construction and reconstruction of toll bridges and tunnels.

The Association's Board of Directors in 1984 approved a toll policy stating that "IBTTA encourages countries in which its member organizations are located to reexamine existing policies to make certain they are taking full advantage of the benefits provided by the toll financing concept ......IBTTA supports the implementation of additional toll facilities as a meaningful and effective alternative to or supplement to tax revenues for the financing of construction and maintenance;....." (Full text of this policy is attached.)

In addition to this mandate for Association action to support and promulgate the toll system of highway financing wherever it is appropriate, there are a number of our member Authorities in States in which the Federal-aid option of toll highway financing could provide additional needed public highway capacity at little cost to the highway user in tax dollars. Among these States are the following: California, Maine, Pennsylvania, West Virginia and Florida.

In addition to these States in which our members are seeking more flexible financing opportunities, there are a number of States in which Departments of Transportation and Highway Departments have indicated their interest in utilizing the toll method of financing, if the option for some Federal assistance is permitted.

These have been made known to the Committee by the presentation of representatives of the American Association of State Highway and Transportation Officials.

Other national and international organizations which support the Federal-aid toll concept include the American Road and Transportation Builders' Association, The Associated General Contractors, The National Conference of State Legislators and The Better Roads and Transportation Council.

With regard to the language of an amendment sought to provide the opportunity for participation of toll roads in Federal-aid highway programs, we support in general the language of bills already introduced into the Senate, namely the Chiles bill, S.1488 and the Thurmond bill, S.1890, and also most of the language in the amendment submitted to the Committee by the Federal Highway Administration, which provides for the opportunity to use Federal-aid for toll roads on new construction rights-of-way.

With regard to that section of the Administration's bill, we are concerned with the language affecting pay-back provisions. We believe the language should be clarified so that it permits the same deductions for operations, maintenance and debt service under either option open to a State - 1) to continue to operate as a toll road after amortizing its bonded debt; or 2) to have the road become a tax supported facility.

The Association was pleased to see the inclusion in your bill (S.5338), of a section providing for the deregulation of various toll bridges in the United States which have been under the jurisdiction of the U.S. Department of Transportation (Federal Highway Administration) as to the justness and reasonableness of their toll rate. This Association has supported the deregulation of these facilities for many years, and the United States Department of Transportation has also favored removal of this regulation since 1982.

The amendment has passed the Senate twice in its present form and we are encouraged to believe that the amendment will this time obtain the approval of the House of Representatives as well and remove this significant burden, in terms of time and money, of potential litigation from the Authorities, the Federal government and the U.S. taxpayer.

Finally, we believe that the toll facilities amendment (Sec. 112) in your present bill, which requires the Governor of each State operating a toll facility which has not signed a tri-partite agreement under either Section 129 or Section 105 of the STA Act of 1978, to report to the Federal Highway Administration every two years regarding the adequate maintenance of said facility,to be superfluous and unnecessary.

Studies recently released by the Congressional Budget Office, The General Accounting Office and the Transportation Research Board all indicate clearly that the maintenance levels on U.S. toll facilities are consistently superior to that of facilities on the tax supported highway systems, including the Interstate. Under these circumstances, the biennial requirement of Governors to testify to this fact seems extraneous and without merit, particularly under the circumstance in which reports on the maintenance of other Federal-aid and non-Federal-aid roads are not required by this or any other Federal law.

These toll roads have been built entirely with State or private funds, and except for the designation of Federal-Aid numbering subsequently placed upon them, are not under the jurisdiction of the Federal-aid program or of FHWA.

We appreciate the opportunity for our views to be circulated among the Committee and we trust that these toll provisions can be enacted into law in the current Congress. This letter is submitted for the hearing record as a part of the Committee's consideration of this important legislation.

Thank you very much for your consideration.

Sincerely,

John J. Hassett

John J. Hassett
Executive Director

JJH/wdb
Attachment

INTERNATIONAL BRIDGE, TUNNEL AND TURNPIKE ASSOCIATION

POLICY STATEMENT

EXPANDED USE OF THE TOLL CONCEPT

**International Bridge, Tunnel
and Turnpike Association**
2120 L Street, N.W., Suite 305
Washington, D.C. 20037 USA
(202) 659-4620

RESOLUTION CONCERNING THE EXPANDED USE OF THE TOLL CONCEPT

WHEREAS, the use of tolls is an internationally recognized means of financing, constructing and maintaining needed highway transportation systems; and

WHEREAS, many countries are proving the effectiveness of the toll concept through their increasing reliance upon toll facilities to develop, reconstruct and expand their highway transportation systems; and

WHEREAS, the "user-pay principle" embodied in toll projects represents an equitable allocation of the cost of providing essential transportation services by placing the burden of paying for such services directly upon those who use them; and

WHEREAS, the financing of said toll projects through the sale of bonds, grants of concession to private companies, etc. provides alternative funding sources to construct needed projects within a reasonable period of time; and

WHEREAS, the need is greater than ever to rehabilitate and enlarge the worldwide transportation infrastructure; and

WHEREAS, recognition of the need to rehabilitate this infrastructure is reflected in the shifting of funds from new construction to the maintenance requirements of the existing highway transportation systems; and

WHEREAS, the members within the International Bridge, Tunnel and Turnpike Association (I.B.T.T.A.) represent the major toll facilities of the world;

NOW, THEREFORE, BE IT RESOLVED, that the I.B.T.T.A. encourages countries in which its member organizations are located to reexamine existing policies to make certain they are taking full advantage of the benefits provided by the toll financing concept; and

BE IT FURTHER RESOLVED, that the I.B.T.T.A. supports the implementation of additional toll facilities, as a meaningful and effective alternative to or supplement to tax revenues for the financing of construction and maintenance; and

BE IT FINALLY RESOLVED, that copies of this Resolution be available for distribution to governmental officials, organizations and various legislative bodies in the countries of its member organizations.

Adopted October 13, 1985
Boston, Massachusetts, U.S.A.

STATEMENT FOR THE RECORD
UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON SURFACE TRANSPORTATION

SENATOR STEVEN SYMMS, CHAIRMAN

SENATE BILL 2405
THE FEDERAL-AID HIGHWAY ACT OF 1986

SUBMITTED BY THE
NATIONAL ASPHALT PAVEMENT ASSOCIATION

MAY 30, 1986
WASHINGTON, D.C.

HEARING DATE: MAY 20, 1986

Contact: Neil Gray
Director of Government Relations
National Asphalt Pavement Association
P.O. Box 517
Riverdale, MD 20737
(301) 779-4880

Mr. Chairman, The National Asphalt Pavement Association (NAPA) is the only national association representing the hot mix asphalt producers and paving contractors, as well as their supporting industries. As more than 90% of the nation's paved roadways are surfaced with asphalt and as much as 80% of our product is sold to governmental entities, we have a very strong interest in the future of the Federal-Aid Highway program and are pleased to be able to offer our comments on S.2405, the Federal-Aid Highway Act of 1986.

NAPA has a long held policy of considering and supporting legislative actions on the basis of whether they are, first and foremost, best for America; second, best for the Hot Mix Asphalt Industry; and third, best for the Association. It is our firm belief that a strong and healthy nation fosters the best environment for free enterprise and opportunities for business success.

Funding

As the subcommittee members are well aware, S.2405 would provide lower funding levels than those contained in the Surface Transportation Assistance Act of 1982 (STAA-82) and also below the expected income levels accruing to the Highway Trust Fund. We are cognizant of the budgetary constraints under which the government is now operating and NAPA has, and will continue to support, any reasonable efforts to reduce the Federal debt and deficits. At the same time, we cannot support with-holding the dedicated user fees held in the Highway Trust Fund through reductions in outlays as a justifiable, deficit reducing activity. The public continues to show strong support for dedicated user fees as an equitable means of financing highway construction and repairs, and efforts to reduce highway outlays below the level of user contributions and the ongoing accumulation of unused highway funds breaks the public trust in the Government's stewardship of this program.

We appreciate the comments offered by the Subcommittee Chairman and others concerning amendments to authorize higher funding levels and NAPA will fully support any such efforts. We recommend the adoption of a $15 Billion/year authorization level in order to fully utilize the anticipated Trust Fund revenues as well as to draw down the accumulated balance of unused highway funds.

NAPA would also support efforts to withdraw the Highway Trust Fund from the unified Federal budget on the basis that these funds are dedicated solely for highway construction, and cannot be legally used for any other governmental purpose, dedicated in the same manner as the Social Security Trust Fund, which has already been removed from the unified budget for this reason.

Trust Fund Revenue

As a means of enhancing revenues to the Highway Trust Fund, the exemption for alcohol fuels (gasohol) from the federal gasoline tax should be ended. This provision diverts as much as $500 million/year of the excises paid by highway users to support an agricultural subsidy program for an already excessively subsidized product. If this provision cannot be deleted, an alternative would be to disallow the use of aggregate fuel gallonage figures, which include gasoline and gasohol, in determining the minimum apportionments for the states. Current practice makes no distinction between the actual tax revenue derived from gasohol and gasoline, creating a disparity in which the minimum apportionments of the few states which produce and sell significant amounts of gasohol are based on the aggregate gallonage sold rather than the actual revenue produced, resulting in higher apportionments than the states are entitled to.

NAPA would also support efforts which have been suggested to raise the contract limits under which Davis-Bacon rates would apply to Federal-Aid projects. By raising the coverage ceiling to $1 million, significant sums would be made available which could go to further constructive and productive work.

Timely Funding

A major concern of the past several years has been the annual legislative wrangling and delay over the Interstate Cost Estimate. The administrative release contained in S.2405 would solve this problem and would grant the states and the contracting community the assurance that these funds will be available on a regular and timely basis, returning the stability that the Federal-Aid Highway Program was once reknowned for.

Of particular concern to our industry is the rapid approval of the highway program as contained in S.2405. The precedents established by the late approval of the STAA-82 and the delayed ICE bills has created a very real fear that the Congress may be unable to approve this legislation prior to October 1, 1986 when the STAA-82 expires. Adding to this concern is the potential that the urgency of reauthorization may be used in the House/Senate Conference Committee as a lever to force the inclusion of undesirable proposals, such as numerous demonstration projects in the final measure. The sponsors of S.2405 have presented a very suitable and streamlined measure which would modify the highway program for the better and we urge the members of the Subcommittee and the full Committee to resist additions to the bill which would reduce or divert any portion of the program funding.

Highway Programs

NAPA supports the combined Interstate/Primary construction program as proposed in S.2405 as means of upgrading the neglected portions of the primary system and as part of the necessary transition process required as the Interstate Highway system nears completion.

Minimum Apportionments

NAPA also supports the proposal to make permanent the 85% minimum apportionment payments within the Federal Highway program. We fully concur with the argument that those states which have completed their portions of the Interstate system should not be penalized for their vigor.

The proposal of a similar 85% minimum apportionment from the Mass Transit Trust Fund is an excellent concept. There are still strong feelings that the diversion of 1¢ the 9¢ per gallon federal gasoline tax to mass transit is an improper use of highway user fees and a breach in the concept of the dedicated user fee. These feelings have been compounded by the grossly unequal distribution of mass transit funds to a few, largely urban, states. The return of these funds to the states will present greater opportunities for the development of the transit systems which were envisioned when the diversion was originally put in place.

Disadvantaged Business Enterprise

The existing program requiring that 10% of contract be performed by a Disadvantaged Business Enterprise (DBE) has, since its inception been an unpalatable and unacceptable condition of performing Federal contracts which have had little recorded success in the formation of viable and competitive DBE contractors. NAPA is supportive of non-preferential incentives for the creation of contracting enterprises which would provide training and experience to those who wish to become contractors rather than the current system which provides funding on the presumption that eligible, competent contractors exist and would be available to perform the work. A copy of NAPA's policy regarding DBE's is attached for the Subcommittee's information.

Strategic Highway Research Project (SHRP)

NAPA fully supports the set-aside of funds from certain Federal-Aid programs in order to finance the studies of the Strategic Highway Research Program (SHRP). This project holds great potential returns in the form of new knowledge and practices which will directly benefit the nation in the form of safer and longer lasting highways.

NAPA appreciates the efforts the sponsors, this Subcommittee and the full Committee in producing a measure which addresses so many of the concerns and problems associated with the Federal-Aid Highway Program. NAPA also appreciates this opportunity to comment on S.2405 and we offer our assistance in the pursuit of an approved highway reauthorization measure prior to October 1, 1986.

ADDENDUM

NAPA Policy Statement On Disadvantaged Business Enterprises

Be it known, that the National Asphalt Pavement Association supports equal opportunity for all persons and preference for none, and, that it believes that the goal of equal opportunity for all can be best achieved by adherence to the competitive bidding system, which rewards contractors on the basis of their individual competitive abilities, and by non-preferential affirmative action designed to eliminate the difficulties in entering and surviving in the highway construction industry, and,

Whereas, government sponsored preference programs in construction which make distinctions among persons solely on the basis race, gender or national origin and then require that specified percentages of work must be performed by such classified persons are discriminatory, and,

Whereas, such numbers oriented programs, creating set-asides and other such artificial restraints, have significantly increased construction costs, while, at the same time stigmatizing individual members of the excluded groups, and,

Whereas, such numbers oriented programs do not address the needs of small and disadvantaged businesses in a way that would enable them to compete equally in a free and open competitive environment, and,

Whereas, the mandated set-asides and goals for Disadvantaged Business Enterprises in the Federal-aid Highway Program bear no relationship to those abilities of the DBE to compete in a free and open competitive environment nor to the DBE's availability or responsibility as highway construction businesses.

Therefore, be it resolved, that the National Asphalt Pavement Association opposes discriminatory programs established by Federal, State and Local governments, such as section 105(f) of the Surface Transportation Assistance Act of 1982, which require that a certain percentage of funds be expended with firms owned by members of preferred races, genders or nationalities; and,

Be it further resolved, that the National Asphalt Pavement Association supports non-preferential affirmative action, including concerted efforts to remove barriers to equal opportunity and the vigorous enforcement of the anti-discrimination laws. Such concerted efforts should include programs designed to provide capital, financing, bonding and educational opportunities to disadvantaged persons with the skill and desire to become owners of highway construction firms. The National Asphalt Pavement Association believes that these non-preferential affirmative actions will greatly improve the opportunities for small firms to compete on an equal basis in the competitive market-place, which is the cornerstone of the American economic system.

Adopted by the Board of Directors of the National Asphalt Pavement Association on May 15, 1986, in St. Louis, Missouri.

STATEMENT

OF

STEEL PLATE FABRICATORS ASSOCIATION, INC.

1250 Executive Place, Building D

Geneva, Illinois 60134

REGARDING SENATE 2405

"THE FEDERAL-AID HIGHWAY ACT OF 1986"

SUBMITTED TO
TRANSPORTATION SUBCOMMITTEE OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

BY
EARL A. BRATTON
SECRETARY AND EXECUTIVE DIRECTOR

BRUCE E. DAVIS, ESQ.
SPECIAL COUNSEL TO THE STEEL PLATE
FABRICATORS ASSOCIATION, INC.

JUNE 9, 1986

I. INTRODUCTION

Founded in 1933, the Steel Plate Fabricators Association, Inc. ("SPFA") represents business units in the United States primarily engaged in the cutting, forming and joining metal plates, shapes, bars, sheet, pipe mill products and tubing to custom or standard design.

Federally-aided highway, bridge and mass transit projects are important markets for SPFA members engaged in fabricating construction steels.

SPFA members have metal fabricating shops in 34 states and Puerto Rico. Most fabricating firms ship their products to projects within several hundred miles of the fabricating shop. No one firm is believed to account for more than 3 percent of total industry shipments.

The U. S. fabricated steel industry has experienced a decline in total employment from approximately 104,000 workers (in 1979) to an estimated 1985 employment level of approximately 50,000 workers.

The current average hourly earnings in the industry are in line with "All Manufacturing" levels.

II. SPFA Supports Reauthorization of the Surface Transportation Assistance Act of 1982

Clearly, extension of the federal-aid highway authorizations provided by the Surface Transportation Assistance Act of 1982 is of critical importance, not only to those of us in the steel fabricating community, but to all citizens of the United States. The vital role which the nation's highway network plays in America's economic vitality, in the national defense, and in the quality of each of our lives cannot be overstated.

SPFA applauds your initiative in developing a comprehensive, multi-year reauthorization bill (S. 2405) which maintains strong emphasis on established national highway priorities, such as completion of the Interstate System.

This Senate Subcommittee has been a leader in shaping the nation's transportation programs and policies. It is evident that you are prepared to continue this effective leadership.

With increasing volumes of traffic on the nation's highways, combined with growing reliance on larger and heavier trucks in the flow of interstate commerce, highway and bridge deterioration has accelerated, traffic congestion has increased, and highway improvement requirements have mounted.

Overall, SPFA believes that the many beneficial aspects of the federal-aid highway program can only be retained through enactment of multi-year reauthorization legislation. S. 2405, which would reauthorize the program for a four-year period 1987-90, is a positive step in this direction.

We do want to express this concern: the proposed authorizations are level over the four years and do not allow for inflation.

III. Buy American

In December 1982, Congress and the Administration worked together to enact the Surface Transportation Assistance Act of 1982. As part of this effort, the Congress supported a "Buy American" amendment to prevent jobs from being lost to foreign nations at a time when a national goal was to create jobs in this country. This 1982 provision, section 165 of the Act, explicitly strengthened previous Buy American laws.

During the past four years, total employment in the United States has increased. Recent Labor Department statistics advise that over 9 million new jobs have been created during the Reagan Administration.

However, there remains in our nation serious unemployment problems, particularly in the manufacturing sectors of our economy, including the steel fabricating industry. Now is not the time for the United States Senate to reverse its 1982 action and establish a $500,000 threshold of applicability for "Buy American."

"Buy American" preferences for federally-aided highway, bridge and mass transit construction projects make good economic sense and are good public policy.

Retention of the strong "Buy American" requirement contained in the 1982 Act will insure that the construction steel required for federally-funded highway and mass transit projects will be produced and fabricated by American labor.

The importance of federally-funded highway projects to the American steel industry and steel fabricators, our employees, and suppliers was confirmed in a September 1985 report by the Federal Highway Administration. This report stated that:

> 121 tons of construction steel products are used per One Million Dollars of highway construction.

If this tonnage is produced and fabricated by American workers, thousands of jobs are created, revenues are generated, and taxes are recovered.

Two recent Library of Congress studies confirm that, when tax dollars are used to purchase American goods, nearly 50% of these dollars are recaptured through federal, state and local taxes. No similar recapture of public funds is generated if foreign goods are purchased with tax dollars.

Government procurements of steel for highway and mass transmit projects are of vital importance to the employees of the domestic steel fabricating industry. It has been estimated that over one million tons of steel per year are used for federally-funded highway and mass transit projects.

The SPFA believes that "Buy American" preferences for government procurement serve an important function in our economy by ensuring that the tax dollars of the American people are used to foster the employment of our citizens.

Adoption of Buy American preferences for public bidding helps employ our workers, generates sales of American-made goods, recaptures through taxes a substantial part of the expenditures, and is consistent with the realities of world trade.

If a $500,000 threshold of applicability were to be approved by this Subcommittee and the full Senate, the commendable bipartisan efforts of 1982 will be largely undone.

The Federal Highway Administration has stated that approximately 60 percent of all federally-aided highway contracts are for $500,000 or less. Thus, enactment of the proposed threshold will substantially undermine the wisdom of Congress, so admirably stated by the 1982 Act House-Senate conferees:

> "It is the intent of the conferees that Federal funding for public projects such as ... road and bridge construction ... assist the American worker and domestic contractors and supplier to the maximum extent feasible (emphasis added) within the bounds of statutory requirements." (Joint Explanatory Statement of the Committee of Conference, H. R. 7019, making appropriations for U. S. DOT for FY 83, *Cong. Rec.*, Dec. 13, 1982, p. H9515).

SPFA, its member companies, and the men and women of our industry respectfully join in making this appeal that the "Buy American" provisions of the 1982 Act be re-enacted without change as part of the "Federal-Aid Highway Act of 1986."

Stop H-3 Association of Hawaii
c/o 46-255 Kahuhipa St., Apt. 1104
Kaneohe, Hawaii 96744

TESTIMONY IN OPPOSITION TO THE H-3 EXEMPTION BILL

Honorable Members of the Committee on Environment & Public Works:

Thank you for this opportunity to submit testimony in opposition to a special Congressional exemption for H-3 from Federal environmental law, especially 4(f). We believe a careful reading of the U.S. 9th Circuit decision makes it clear that the 4(f) law was applied correctly in the H-3/Hoomaluhia Park case. After a thorough review, the three judge panel determined that Hoomaluhia Park would be adversely affected by the construction of H-3, and that there were prudent and feasable alternatives to its route around the borders of the park, including the "no build" alternative. It must be remembered that Hoomaluhia Park was itself almost completed in December of 1980 when the Federal Highway Administration approved the new H-3 route. Hoomaluhia Park was thus part of the existing environment protected by Federal law, and this should have been considered by federal and state highway planners. The full 9th Circuit Court and the U.S. Supreme Court had an opportunity to overturn or modify the original decision, but both sustained it.

In addition to the damage to Hoomaluhia (Place of Peace), H-3 will have numerous other environmental, social, and economic impacts of a negative nature that must be considered. I will not attempt to review all of them in this brief statement. Rather, I would refer you to our booklet - The Truth About H-3, sent to you some time ago. Some trade-offs would be necessary to develop a transportation infrastructure to solve traffic problems, but H-3, running from the Windward side to Aiea, does little to serve the needs of the intended commuter population. I believe that virtually none of the H-3 proponents you have heard from will actually use H-3 themselves to get to work.

The State Administration's special exemption request for H-3 must be seen in the broader context of the State's attitude and response to Federal law and jurisdiction. The record is one of defiance and evasion, as the attached political commentary makes clear. One unmentioned case involves the exemption to use the dangerous pesticides heptachlor and EDB on the pineapple fields. The results have been widespread contamination of dairy products and groundwater supplies, affecting thousands of people on Oahu. Already in the case of H-3, Senator Inouye secured a special exemption from the Navy 20 years ago to build H-3 through the high power electromagnetic radiation field of the OMEGA antenna system being developed in Haiku Valley. The Navy had turned down the StateDOT three times until Senator Inouye interceded. In the deal, the State agreed to assume all liability for the shock, radiation, and electronic interference generated by the collocation of H-3 and the OMEGA antenna. What will this proposed H-3 exemption bill do in regard to this issue?

Despite the claims of the pro H-3 letters, petitions, and resolutions, this project faces widespread opposition in the State. As these attached* Honolulu Advertiser political cartoons suggest, the H-3 is a target of ridicule and derision. The symbol of a 'dying dinosaur' that is blocking traffic is an appropriate one to represent H-3. Oahu's population consitutes more than 75% of the total state population. The 1975 General Plan for Oahu shifted the second city and population growth from Windward to Central and Leeward Oahu. Traffic congestion in these areas are by far and away the worst on the island. Windward Oahu needs a better traffic flow into Honolulu: something the City Department of Transportation Services states can be achieved for less than $ 100 million. Just the cost of the third trans-Koolau tunnels are far in excess of $ 200 million. We believe that real traffic solutions for both Windward and Leeward Oahu cannot be achieved until the City and State get together to draw up a list of alternate projects and transfer the $ 700 million of H-3 funds. Several affected Neighborhood Boards have passed resolutions to that effect.

We urge this Committee to deny a special exemption from Federal law for H-3. This will have a negative effect on Hawaii specifically, and it will set a bad precedent that could undermine the body of federal environmental law built up in the United States over the last twenty years.

Thank you.

Richard Ziegler
Richard Ziegler

President

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*Retained in committee files.

II

99TH CONGRESS
2D SESSION

S. 2405

To authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6 (legislative day, MAY 5), 1986

Mr. SYMMS (for himself, Mr. STAFFORD, Mr. BENTSEN, Mr. BURDICK, and Mr. ABDNOR) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal-Aid Highway Act of 1986".

AUTHORIZATIONS

SEC. 102. The following sums are hereby authorized to be appropriated out of the Highway Trust Fund other than the Mass Transit Account—

(1) For the Federal-aid Interstate-Primary Program $8,150,000,000 per fiscal year for each of the

fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(2) For the Federal-aid urban system $750,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(3) For the Federal-aid secondary system in rural areas $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(4) For bridge replacement and rehabilitation under section 144 of title 23, United States Code, $1,500,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. All but $200,000,000 per fiscal year of each such authorization shall be apportioned as provided in 23 U.S.C. 144(e). Such $200,000,000 shall be obligated as provided in 23 U.S.C. 144(g)(2). The minimum percentage off-system bridge provisions of 23 U.S.C. 144(g)(2) shall continue effective in fiscal years 1987, 1988, 1989, and 1990.

(5) For carrying out the Federal lands highway program under section 204 of title 23, United States Code—

(A) For forest highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(B) For public lands highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(C) For Indian reservation roads, $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(D) For park roads and parkways $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(6) For carrying out the territorial highway program under section 215(a) of title 23, United States Code—

(A) For the Virgin Islands, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(B) For Guam, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(C) For American Samoa, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(D) For the Commonwealth of the Northern Mariana Islands, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(7) For carrying out section 402 of title 23, United States Code (relating to highway safety construction programs), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(8) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway construction safety research and development), by the

Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(9) For projects for the elimination of hazards under section 152 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

(10) For projects for the elimination of hazards of railway-highway crossings on any public road under section 130 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

INTERSTATE SUBSTITUTE PROGRAM

SEC. 103. Section 103(e)(4) of title 23, United States Code, is amended to read as follows:

"(4) INTERSTATE SUBSTITUTE PROGRAM.—

"(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

"(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road or both, which will serve the area or areas from which the Interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located.

"(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983, except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

"(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof.

"(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

"(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects or for projects under any highway assistance program shall remain available in the State of apportionment or allocation for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year.

"(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments shall be in accordance with the latest adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

"(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

"(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, 1982, $257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs $700,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985, and $725,000,000 for the fiscal year ending September 30, 1986, and $650,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

"(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Twenty-five per centum of the funds made available by subparagraph (G) for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 per centum of such funds shall be apportioned in accordance with cost estimates.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September of 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Tables 3 and 4, Committee Print 99-69 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary, (2) changes in the State estimates in the division of funds between substitute highway and transit projects, (3) approval of substitute projects, and (4) the allocation and apportionment of substitute highway funds in prior fiscal years and shall use the Federal share of such adjusted estimates in making apportionments for substitute highway projects for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

"(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty per centum of the funds appropriated for each fiscal year beginning after September 30, 1983, for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised tables 3 and 4, Committee Print 99-69 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary under this paragraph, (2) changes in State estimates of the division of funds between substitute highway and transit projects, (3) approvals of substitute projects, and (4) the allocation and apportionment of substitute transit funds in prior fiscal years and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

"(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

"(ii) EXCEPTION.—In any State where the withdrawal of an Interstate route or portion thereof has been approved under this paragraph prior to the date of the enactment of the Federal-

Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown on the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all Interstate routes in the State, as shown on such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph prior to enactment of such Federal-Aid Highway Act.

"(L) APPLICABILITY OF URBAN MASS TRANSPORTATION ACT.—

"(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

"(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provisions of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

"(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

"(O) LIMITATION OF SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

"(P) RIGHT-OF-WAY PAYBACK.—Of sums made available to the Secretary under this paragraph for a State, an amount equal to the amount expended in Federal funds to purchase right-of-way for the withdrawn route or portion thereof in every case where right-of-way has not been disposed of by the State as of the date of enactment of this sentence shall not be available for release by the Secretary until the right-of-way disposition decision has been made in accordance with 103(e)(5)(B), (6)(B), or (e)(7) of this title. The amount apportioned to each eligible State pursuant to this paragraph shall be based on the full remaining value of the sums made available under this paragraph as determined by the Secretary but the total of such apportionments shall not exceed the remaining value of such sums less the amount unavailable for release by the Secretary. Sums retained by the Secretary shall be made available for apportionment upon partial or full repayment of funds in accordance with section 103(e)(7) of this title or upon determination by the Secretary that, under section 103(e)(5)(B) or (6)(B), repayment is not required.".

APPORTIONMENT

SEC. 104. Section 104 of title 23, United States Code, is amended by (a) striking in paragraph (f)(1) ", except that in the case of funds authorized for apportionment on the

Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System." and inserting in lieu thereof a period and by relettering subsection (f) as subsection (b).

(b) Adding a new subsection (c) as follows:

"(c) On October 1 of each of the fiscal years, ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, the Secretary, after making deductions authorized by subsections (a) and (b) of this section, shall deduct one-quarter per centum of the remaining funds authorized to be appropriated for that fiscal year for the Federal-aid Interstate-Primary Program, the urban system, the secondary system, bridge replacement and rehabilitation, Interstate substitution highway projects, projects for the elimination of hazards of railway-highway crossings, and for projects for the elimination of hazards under section 152 of this title for the purpose of carrying out the objectives of the Strategic Highway Research Project under section 133 of this title."

(c) Repealing existing subsections (c) and (d).

(d) Existing subsection (b) is amended to read as follows:

"(d) On October 1 of each fiscal year the Secretary, after making the deductions authorized by subsections (a), (b), and (c) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for the fiscal year, among the several States in the following manner:

"(1) FOR THE FEDERAL-AID INTERSTATE-PRIMARY PROGRAM.—

"(A) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $3,000,000,000 remaining after making the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned in the ratio which the estimated cost of completing the Interstate System in each State bears to the sum of the estimated cost of completing the Interstate System in all of the States as established in revised table 5, Committee Print 99-68 of the Senate Committee on Environment and Public Works: *Provided,* That the Secretary shall on October 1, 1986, before making the apportionment required by this paragraph, adjust such Interstate Cost Estimate to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of Interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of

Interstate discretionary funds, and (iv) transfers of Interstate construction funds and: *Provided,* That for each of the fiscal years 1987, 1988, 1989, and 1990, no State, including the State of Alaska, shall receive less than one-half per centum of the total apportionment under this paragraph (A). Whenever amounts made available under this proviso in any State exceed the estimated cost of completing that State's portion of the Interstate System, and exceed the estimated cost of necessary resurfacing, restoration, rehabilitation, and reconstruction of the Interstate System within such State, the excess amount shall be eligible for expenditure on the primary system (other than the Interstate System), urban and secondary systems and for projects for the elimination of hazards under section 152 of this title.

"(B) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,800,000,000 remaining after making the deduction authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows 55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such vehicle miles in all States. Notwithstanding the preceding sentence, no State excluding any State that has no Interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

"(C) Before making the apportionment under this paragraph (C), the Secretary shall set aside such sums as are necessary to carry out the provisions of subparagraph (C)(iv). For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,350,000,000 remaining after such set aside and after the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows:

"(i) The Secretary shall determine for each State the higher of the amount which would be apportioned to such State under a formula where (I) two-thirds would be apportioned, one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary; and one-third in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census with no State (other than the District of Columbia) to receive less than one-half per centum of each year's apportionment and the amount which would be apportioned to such State under a formula where (II) each State would be apportioned one-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

"(ii) The Secretary shall total the amounts determined for each State under paragraph (i) and shall determine the ratio which the amounts apportioned under this paragraph (C) bears to such total.

"(iii) The amount which shall be apportioned to each State under this paragraph (C) shall be the amount determined for such State under paragraph (i) multiplied by the ratio determined under paragraph (ii).

"(iv) No State shall receive an apportionment under this paragraph (C) which is less than the lower of (I), the amount which the State would be apportioned under the formula in paragraph (i)(I), and (II), the amount which the State would be apportioned under the formula in paragraph (i)(II). No State shall receive less than one-half per centum of the total apportionment under this paragraph (C).

"(2) For the Federal-aid secondary system one-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment.

"(3) For the Federal-aid urban system in the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.".

(e) Subsection (e) is amended to read as follows:

"(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums apportioned hereunder to each State for such fiscal year, and also the sums which have been deducted pursuant to subsections (a), (b), and (c) of this section. To permit the State to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.".

(f) Existing subsection (g) is amended to read as follows:

"(f) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State highway department, and is approved by the Secretary as being in the public interest, if the Secretary has received satisfactory assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.".

(g) Existing subsection (h) is repealed.

(h) Subsection (h) is added as follows:

"(h)(1) The amount apportioned in any fiscal year to each State in accordance with paragraph (2) or (3) of subsection (d) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (3) of subsection (d) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title without the approval of the local officials of such urbanized area.

"(2) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of any apportionment for any fiscal year shall be transferred to other apportionments.".

LETTING OF CONTRACTS

SEC. 105. Section 112(b) of title 23, United States Code, is amended by inserting "or that an emergency situation exists" before the period at the end of the first sentence.

AVAILABILITY

SEC. 106. Section 118 of title 23, United States Code, is amended to read as follows:

"Sec. 118. Availability.

"(a) On and after the date that the Secretary has certified to each State the sums apportioned or allocated pursuant to an authorization under this title such sums shall be available for obligation under the provisions of this title.

"(b)(1) Sums apportioned for the Federal-aid Interstate-Primary Program, for the Federal-aid secondary system and for the Federal-aid urban system in a State shall continue available for obligation in that State for the appropriate program and system for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unobligated at the end of such period shall lapse.

"(2)(A) Sums apportioned for bridge replacement and rehabilitation in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the sums are authorized and any amounts apportioned remaining unobligated at the end of the period shall be allocated by the Secretary pursuant to section 144(g)(2) of this title.

"(B) Sums allocated for bridge replacement and rehabilitation in a State shall remain available for obligation in that State until the close of the fiscal year of allocation and any amount allocated remaining unobligated at the end of the period shall be reallocated by the Secretary pursuant to section 144(g)(2) of this title.

"(3) Sums apportioned or allocated for a particular purpose for any fiscal year shall be deemed to be obligated if a sum equal to the total of the sums apportioned or allocated to the State for such purpose for such fiscal year and previous fiscal years is obligated. Any funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds previously apportioned or allocated to the State and be immediately available for obligation.".

INTERSTATE SYSTEM RESURFACING

SEC. 107. (a) Section 119(a) of title 23, United States Code, is amended by (1) striking "section 105 of the Federal-Aid Highway Act of 1978" and inserting in lieu thereof "section 129(k) of this title" and by (2) striking the next to the last sentence.

(b) Section 119(b) of title 23, United States Code, is amended by striking "for the Interstate system shall" and inserting in lieu thereof "shall", by (2) striking "equal to 10 per centum" and inserting in lieu thereof "of not more than 10 per centum", and by (3) striking "104" and inserting in lieu thereof "104(d)(1)(A)".

(c) Section 119(d) is repealed.

FEDERAL SHARE PAYABLE

SEC. 108. (a) Subsection (a) of section 120, title 23, United States Code, is amended by striking "financed with primary" and inserting in lieu thereof "financed with Interstate-primary" and by inserting "(other than the Interstate System)" after "primary system".

(b) Subsection (b) of section 120, title 23, United States Code, is repealed.

(c) Subsection (c) of section 120, title 23, United States Code, is amended by striking "provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to" and inserting in lieu thereof ", as designated in section 103 of this title and as designated prior to March 9, 1984, in section 139 (a) and (b) of this title financed with Interstate-primary funds shall not exceed".

(d) Subsection (f) of section 120 of title 23, United States Code, is amended by striking "shall not exceed 100 per centum of the cost thereof: *Provided*" and inserting in lieu thereof "on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable of a project on a system as provided in subsections (a) and (c) of this section: *Provided*, That the Federal share payable for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within thirty days after the actual occurrence may amount to 100 per centum of the costs thereof: *And provided further*".

(e)(1) The second subsection (i), subsection (j), and subsection (k) of section 120 of title 23, United States Code, are relettered as subsection (j), (k), and (l) respectively.

(2) The second subsection (i) of section 120, title 23, United States Code, relettered as subsection (j), is amended by inserting "104(b) and" before "307(c)".

(f) Subsection (m) is added to section 120 of title 23, United States Code, as follows: "Notwithstanding other provisions of this title, a State may contribute an amount in excess of its normal share on a project constructed under this title so as to decrease the Federal share payable on such project: *Provided*, That the use of this provision shall be subject to criteria established by the Secretary.".

(g) Section 120(f) of title 23, United States Code, as amended by this section is effective for all natural disasters or catastrophic failures which occur subsequent to enactment of this Act.

RELOCATION OF UTILITY FACILITIES

SEC. 109. Section 123(a) of title 23, United States Code, is amended to read as follows:

"(a) When a State pays for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary system including the Interstate System, or under a Federal-aid program, or under the State's safety improvement program for the elimination of hazards to the traveling public resulting from the utility facilities on or near the right-of-way of highways on the Federal-aid primary system including the Interstate system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are used on the project.".

EMERGENCY RELIEF

SEC. 110. Section 125 of title 23, United States Code, is amended by adding subsection (d) as follows:

"(d) For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Island shall be considered to be States and part of the United States, and the chief executive officer of each territory shall be considered to be a Governor of a State. The Secretary may expend funds from the sums authorized for this section for the repair or reconstruction of highways eligible for assistance under section 215 of this title: *Provided,* That obligations for projects under this subsection shall not exceed $5,000,000 in any fiscal year.".

VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM

SEC. 111. Section 127(a) of title 23, United States Code, is amended by striking "authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned" and inserting in lieu thereof "shall be apportioned under section 104(d)(1)(A) of this title" and by (b) adding after the word "lapse" the following: "if not released and obligated within the availability period specified in section 118(b)(1) of this title".

TOLL FACILITIES

SEC. 112. (a) Section 129 of title 23, United States Code, is amended by adding the following new subsections:

"(j)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978, on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the State's apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: *Provided,* That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.".

"(k) Sums apportioned to a State for the Federal-aid Interstate-Primary Program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes in use for more than five years on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, a toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.

(b) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

RAILWAY-HIGHWAY CROSSINGS

SEC. 113. (a) Section 130 of title 23, United States Code, is amended by adding subsections, (d), (e), (f), (g), and (h) as follows:

"(d) Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

"(e) At least half of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated for this section shall be available for obligation in the same manner as funds apportioned under section 104(d)(1) of title 23, United States Code.

"(f) 25 per centum of the funds authorized for this section shall be apportioned to the States in the same manner as sums apportioned under section 104(d)(2) of title 23, United States Code, 25 per centum of such funds shall be apportioned to the States in the same manner as apportioned under section 104(d)(3) of title 23, United States Code, and 50 per centum of such funds shall be apportioned to the States in the ratio that total rail-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized for this section shall be 90 per centum of the cost thereof.

"(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

"(h) Funds authorized for this section may be used to provide local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railroad crossings.".

(b) Section 203 of the Highway Safety Act of 1973 is repealed.

STRATEGIC HIGHWAY RESEARCH PROGRAM

SEC. 114. Title 23, United States Code, is amended by adding section 133 as follows:

"§ 133(a). Strategic highway research program

The sums provided by section 104(c) of this title shall be available for obligation when deducted to implement the Strategic Highway Research Program (SHRP). The Secretary is authorized to carry out the SHRP in cooperation with the State highway departments, as represented by the American Association of State Highway and Transportation Officials (AASHTO). The Secretary shall set standards to use the funds under this paragraph to conduct research, development and technology transfer activities determined to be strategically important to the national highway transportation system. The Secretary may provide grants to, and enter into cooperative agreements with, AASHTO and/or the National Academy of Sciences to conduct appropriate portions of the SHRP. Advance payments may be made as necessary to facilitate such cooperative agreements. No State matching share is required for the sums made available under this section. The sums provided by this section shall be combined and administered by the Secretary as a single fund which shall be available for obligation for the same period as funds apportioned for the Federal-aid Interstate-Primary Program.

"(b) The Secretary shall transmit a report annually beginning on January 1, 1988, to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress which provides information on the progress and research findings of the Strategic Highway Research Program.".

SECTION 139 ROUTES

SEC. 115. The last sentence of section 139(a), the fourth sentence of 139(b), and the last sentence of section 139(c) of title 23, United States Code, are each amended by striking "sections 104(b)(1) and 104(b)(5)(B)" and inserting in lieu thereof "section 104(d)(1)".

OFF-SYSTEM BRIDGE PROGRAM

SEC. 116. Section 144, title 23, United States Code, is amended by adding a new subsection as follows:

"(n) Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway system for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under section 144 of title 23, United States Code, is noncontroversial, is certified by the state to have been carried out in accordance with all standards applicable to such projects under section 144, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the effective date of this section, from such State and local sources for such project in excess of 20 per centum of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under section 144, in accordance with procedures established by the Secretary.".

ELIGIBILITY

SEC. 117. Title 23, United States Code, is amended by adding section 153 as follows:

"§ 153. Eligibility

State or local taxes which are based upon the amount of a federally assisted contract or which are assessed upon construction materials to be incorporated into a federally assisted project are not items eligible for Federal reimbursement under this title.".

MINIMUM ALLOCATION

SEC. 118. (a) Section 157(a) of title 23, United States Code, is amended to read as follows:

"(a) Beginning with fiscal year 1987, as soon as practicable after the date of enactment of the Federal-Aid Highway Act of 1986 and in each of the fiscal years thereafter, on October 1, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title, amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs, except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that

State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1986.

(c) Title 23, United States Code, section 157(c) is amended by striking the "and" that precedes "September 30, 1986" and inserting after "1986" the following: ", September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

FEDERAL-AID INTERSTATE-PRIMARY PROGRAM

SEC. 119. Title 23, United States Code, is amended by adding section 159 as follows:

"§ 159. Federal-aid Interstate-primary program

"(a) It is the national policy to bring all elements of the primary system up to standards established pursuant to section 109 of this title. To accomplish this policy the Federal-aid Interstate-primary program shall consist of projects for the construction, reconstruction, rehabilitation, restoration, and resurfacing or improvement of the primary system as designated in section 103(a) of this title and the Interstate System as designated in section 103(c)(1) and section 139 of this title.

"(b) In approving projects under this section, the Secretary shall give priority consideration to projects to complete essential gaps on the Interstate System and for the reconstruction, rehabilitation, restoration, and resurfacing of existing highway facilities. Reconstruction may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed Interstate routes, including the acquisition of right-of-way where necessary.".

INCOME FROM RIGHTS-OF-WAY

SEC. 120. Title 23, United States Code, is amended by adding section 160 as follows:

"§ 160. Income from rights-of-way

"Net income that a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under this title shall be used by the State for projects eligible under this chapter.".

TERRITORIAL HIGHWAY PROGRAM

SEC. 121. Subsection (f) of section 215 of title 23, United States Code, is amended to read as follows:

"(f) The provisions of chapter 1 of this title that are applicable to Federal-aid Interstate-Primary Program funds and to projects on the Federal-aid primary system other than the Interstate System shall apply to funds authorized to be appropriated to carry out this section, to funds obligated under this section and to projects carried out under this section except as determined by the Secretary to be inconsistent with this section. There shall be designated in each territory, a territorial Federal-aid highway system which will include all highways eligible for funding under this section. The system shall be designated by the highway department of the territory and be subject to the approval of the Secretary. Funding provided under this section shall only be available for highway construction projects on the territorial Federal-aid system.".

BICYCLE PROJECTS ELIGIBILITY

SEC. 122. The second sentence of section 217(b)(1) of title 23, United States Code, is amended by inserting "and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title" after the word "title".

HIGHWAY PLANNING AND RESEARCH

SEC. 123. Section 307(c)(1) of title 23, United States Code, is amended by inserting after "section 104 of this title", the following: "and for highway projects, section 103(e)(4)".

NATIONAL HIGHWAY INSTITUTE

SEC. 124. Subsections (b) and (c) of section 321 of title 23, United States Code, are amended to read as follows:

"(b) Not to exceed one-quarter per centum of all Federal-aid Interstate-Primary Program funds, apportioned to a State under section 104 of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 75 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) Education and training of Federal, State, and local highway employees authorized by this section shall be provided by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility, or, in the case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contract with public and private agencies, institutions, individuals and the Institute.".

RIGHT-OF-WAY DONATION

SEC. 125. (a) Notwithstanding any other provision of title 23, United States Code, the State matching share for a project under title 23, United States Code, may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the effective date of this subsection. For purposes of this subsection the fair market value of donated land shall be established after the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier. This subsection shall not apply to donations made by an agency of a Federal, State or local government. The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project to which the donation is applied.

(b) Section 323 of title 23, United States Code, is amended by—

(1) inserting after "Donations." an "(a)"; and

(2) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) may be made at any time during the development of a project: *Provided,* That any document executed as part of such donation clearly indicates that—

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

"(ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document.".

(c) Section 4651 of title 42, United States Code, is amended as follows:

(1) Insert after "programs" in the first sentence the following "to promote joint projects between States and landowners and other entities in order to maximize Federal and State dollars".

(2) Insert new paragraph (10) as follows:

"(10) Promotion of joint projects wherein private citizens and other governmental entities participate in the cost through land donations and/or financial contributions is consistent with Federal policy and should be encouraged by all Federal agencies. To this end donations of right-of-way and/or financial contributions by a State or other political subdivision, or any person is permissible.".

(d) Notwithstanding any other provision of law, the fair market value of any lands which have been or in the future are donated or dedicated to the State of California necessary for the right-of-way for relocation and construction of California State Route 73 in Orange County, California, from its interchange with Interstate Route I–405 to its interchange with Interstate Route I–5 shall be included as a part of the cost of such relocation and construction project and shall be credited first toward payment of the non-Federal share of the cost of such relocation and construction project. If the fair market value of such lands exceeds the non-Federal share of such relocation and construction project, then the excess amount, upon the request of the State of California, shall be credited toward the non-Federal share of the cost of any other project on the Federal-aid system in the State of California. To further the purposes of this section and section 323 of title 23, United States Code, any recorded irrevocable offer of dedication or donation of property within the right-of-way shall be considered as part of the State right-of-way acquisition for purposes of this section if such offer is irrevocable and effective no later than such time as the State of California requests final reimbursement for the Federal share. In no case shall the amount of Federal-aid reimbursement to the State of California on account of such relocation and construction project exceed the actual cost to the State for such project.

PROHIBITION AGAINST DISCLOSURE AND ADMISSION AS EVIDENCE OF STATE REPORTS AND SURVEYS

SEC. 126. Chapter 4 of title 23, United States Code, is amended by adding section 409 as follows:

"§ 409. Reports, surveys; disclosures; admission as evidence

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled with the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-highway crossings, pursuant to sections 130, 144, and 152 of title 23, United States Code, or for the development of any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence, or considered for other purposes, in any action for damages arising from any matter mentioned or addressed in such reports, surveys, schedules, lists or data.".

BUY AMERICA

SEC. 127. Section 165(a) of the Surface Transportation Assistance Act of 1982 is amended to read as follows:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, for projects whose total cost exceed $500,000, unless steel and manufactured products used in such projects are produced in the United States.".

REGULATION OF TOLLS

SEC. 128. (a) Section 4 of the General Bridge Act of 1906 (34 Stat. 85, 33 U.S.C. 494), as amended, is further amended by deleting the last sentence thereof.

(b) Section 17 of the Act of June 10, 1930 (46 Stat. 552, 33 U.S.C. 498a), as amended, is repealed.

(c) Section 1 of the Act of June 27, 1930 (46 Stat. 821, 33 U.S.C. 498b), as amended, is repealed.

(d) Sections 1–5 of the Act of August 21, 1935 (49 Stat. 670, 33 U.S.C. 503–507), as amended, are repealed.

(e) Sections 503 and 506 of the General Bridge Act of 1946 (60 Stat. 847, 848, 33 U.S.C. 526, 529), as amended, are repealed.

(f) Section 133 of Public Law 93–87 (87 Stat. 267, 33 U.S.C. 526a) is repealed.

(g) Section 6 of the International Bridge Act of 1972 (86 Stat. 732, 33 U.S.C. 535d) is repealed.

(h) Section 6(g)(4) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(4)) is repealed.

(i) Tolls for passage or transit over any bridge constructed under the authority of the Bridge Act of 1906, as amended, the General Bridge Act of 1946, as amended, and the International Bridge Act of 1972, shall be just and reasonable.

MASS TRANSIT ACCOUNT MINIMUM ALLOCATION

SEC. 129. (a) Notwithstanding any other provision of law, as soon as is practicable in each fiscal year, commencing with the fiscal year ending September 30, 1987, the Secretary shall allocate among the States from the appropriations made from the Mass Transit Account of the Highway Trust Fund for such fiscal year, amounts sufficient to insure that a State's percentage of total allocations from the Mass Transit

Account for such fiscal year, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Mass Transit Account in the latest fiscal year for which data are available. For purposes of this section a State is any one of the 50 States and the District of Columbia.

(b) Notwithstanding any other provision of law, amounts allocated pursuant to subsection (a) of this section shall be available for obligation when allocated for the fiscal year in which allocated plus the three succeeding fiscal years, shall be subject to the appropriate provisions of title 23, United States Code, and the Urban Mass Transportation Act of 1964, as amended, as determined by the Secretary of Transportation, and shall be available for obligation for any projects authorized by the Urban Mass Transportation Act of 1964, as amended, and for highway construction projects on any public road.

DISADVANTAGED BUSINESS ENTERPRISE

SEC. 130. (a) CONTRACTING GOAL.—Except as the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this title or obligated under title 1 of Public Law 97–424 after the effective date of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—For the purposes of this section:

(1) "disadvantaged business enterprise" means a small business concern owned and controlled by socially and economically disadvantaged individuals;

(2) "small business concern" is defined by section 3 of the Small Business Act (15 U.S.C. 632), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $10 million, as adjusted by the Secretary for inflation; and

(3) "socially and economically disadvantaged individuals" is defined by section 8(d)(2)(C) of the Small Business Act (15 U.S.C. 637(d)(2)(C), except that women shall be presumed to be socially and economically disadvantaged individuals.

(c) TECHNICAL ASSISTANCE.—Amounts expended for technical assistance to benefit disadvantaged business enterprises may be used to meet up to 10 per centum of the amounts required to be expended on a contract or subcontract with a disadvantaged business enterprise under the provisions of this section.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern is a disadvantaged business enterprise for the purposes of this section. Such minimum uniform criteria shall include but not be limited to onsite visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) LEVEL OF EFFORT BY SUBCONTRACTORS.—

(1) Amounts expended with a disadvantaged business enterprise for subcontracting work shall not be used to meet any part of the goal established by this section unless such enterprise performs with its own organization subcontract work amounting to not less than 30 per centum of the subcontract price not including materials and supplies.

(2) A State government may reduce the 30 per centum requirement of paragraph (1) for a particular contract if it determines that such a reduction would be in the public interest and that the level of effort by the disadvantaged business enterprise is consistent with industry practice by subcontractors for the type of work involved.

(3) Except for contracting arrangements approved in advance by the State government, any payments from a disadvantaged business enterprise to the prime

contractor or any affiliate shall not be used to meet any part of the goal established by this section.

(f) PRIME CONTRACTS.—Except as the Secretary determines otherwise, amounts equal to not less than 5 per centum in 1988, not less than 7 per centum in 1989 and not less than 10 per centum in 1990, of the goal established by this section for a State shall be expended on contracts directly between a State government and a disadvantaged business enterprise.

(g) APPLICABILITY.—Section 105(f) of Public Law 97–424 shall not apply to amounts authorized under title 1 of such Act and obligated after the effective date of this Act.

RELEASE OF CONDITION RELATING TO CONVEYANCE OF A CERTAIN HIGHWAY

SEC. 131. Notwithstanding paragraph (1) of subsection (b) of section 146 of the Federal-Aid Highway Act of 1970 (84 Stat. 1739) and any agreement entered into under such subsection, no conveyance of any road or portion thereof shall be required to be made under such paragraph or agreement to the State of Maryland and the State of Maryland shall not be required to accept conveyance of any such road or portion. Funds authorized by such section may be obligated and expended without regard to any requirement of such paragraph or agreement that such conveyance be made.

WASTE ISOLATION PILOT PROJECT

SEC. 132. For the fiscal year ending September 30, 1986, and thereafter, there is authorized to be appropriated $58,000,000 to remain available until expended for the upgrading of certain highways in the State of New Mexico for the transportation of nuclear waste generated during defense-related activities.

OBLIGATION LIMITATION

SEC. 133. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $12,350,000,000 for fiscal year 1987;

(2) $12,350,000,000 for fiscal year 1988;

(3) $12,350,000,000 for fiscal year 1989; and

(4) $12,350,000,000 for fiscal year 1990.

These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(b) For each of the fiscal years 1987, 1988, 1989 and 1990, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(c) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b) for fiscal year 1987, and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(d) Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State;

(2) after August 1 of each of the fiscal years 1987, 1988, 1989, and 1990 revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section

104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, Federal lands highways, and the Strategic Highway Research Program.

HISTORIC BRIDGES

SEC. 134. (a) Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.

(b) The Secretary shall, in cooperation with the State, implement the programs described in section 144 of this title in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse and future study of historic bridges.

(c) The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(d) Reasonable costs associated with actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which continue to be used for motorized vehicular traffic shall be eligible as reimburseable project costs, including projects authorized pursuant to section 144 of this title, provided that the load capacity and safety features of the resulting bridge are adequate to serve the intended use for the life of the facility. Funding pursuant to section 144 of this title for actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which are no longer used for motorized vehicular traffic shall not exceed the estimated cost of demolition.

(e) Any State which proposes to demolish a historic bridge for a replacement project with funds made available pursuant to section 144 of this title, shall make the bridge available for donation to a State, locality, or responsible private entity provided such State, locality, or responsible entity enters into an agreement to—

(1) maintain the bridge and the features that give it its historic significance and

(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action. Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible project costs under

chapter 1 of this title up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this subsection shall thereafter not be eligible for any other funds authorized pursuant to this title.

(f) For purposes of this section, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(g) The Secretary of Transportation shall make appropriate arrangements with the Transportation Research Board of the National Research Council to carry out a study of the section 144 bridge program's effect on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

FOREST HIGHWAYS

SEC. 135. Notwithstanding section 202(a) of title 23, United States Code, the Secretary of Transportation shall, after making the transfer provided by section 204(g) of title 23, United States Code, on October 1, of each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, allocate 66 per centum of the remainder of the authorization for forest highways provided for that fiscal year by this Act in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted to (1) eliminate the 0.003,243,547 per centum for the State of Iowa to the State by deed executed May 26, 1964, and (2) redistribute the above percentage formerly apportioned to the State of Iowa for other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal years shall be allocated pursuant to section 202(a) of title 23, United States Code.

WILDFLOWERS

SEC. 136. Section 319 of title 23, United States Code, is amended by inserting an "(a)" after section 319 and inserting the following new subsection:

"(b) The Secretary shall require the planting of native wildflower seeds and/or seedlings as part of any landscaping project under this section. At least one-quarter per centum of the funds expended for landscaping projects shall be used for such plantings. The requirements of this subsection may be waived by the Secretary if the State certifies that such native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes. Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.".

COMBINED ROAD PLAN DEMONSTRATION PROGRAM

SEC. 137. (a) The Secretary of Transportation, in cooperation with up to 10 States, shall conduct a Combined Road Program Demonstration to test the feasibility of approaches for combining, streamlining and increasing the flexibility in the administration of the Federal-aid secondary, Federal-aid urban and off-system urban and secondary bridge programs. The demonstration shall place as much responsibility as feasible with State and local governments including, but not limited to, the granting of design exceptions and the conduct of final inspections.

(b) As soon as is practicable, upon completion of the demonstration project, the Secretary of Transportation shall submit a report to the Congress evaluating the effectiveness of the demonstration and making needed recommendations.

CALIFORNIA EMERGENCY RELIEF

SEC. 138. Section 125(b) of title 23, United States Code, is amended by inserting after "$30,000,000" the following: "(or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986)".

INTERIM AMENDMENTS

SEC. 139. (a) Unobligated balances of Interstate construction funds apportioned or allocated to a State and available to a State on September 30, 1986, shall be available for obligation for Interstate construction projects or to convert Advance Construction Interstate projects until October 1, 1990. Federal Interstate construction funds shall not be used to reimburse the State under section 123(a) of title 23, United States Code, when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Projects constructed under this subsection are eligible for the Federal share payable provided in section 120(b) of title 23, United States Code. Interstate discretionary funds unallocated on September 30, 1986, shall be available for allocation until October 1, 1990.

(b) Unobligated balances apportioned to a State under section 104(b)(1) of title 23, United States Code and section 104(b)(5)(B) of title 23, United States Code, shall be available for obligation for projects under section 159 of title 23, United States Code.

(c) Unobligated balances apportioned to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under the provisions of section 108 of the Highway Improvement Act of 1982 shall be considered to have been authorized to be appropriated to carry out the provisions of section 215 of title 23, United States Code.

(d) Unobligated balances apportioned to a State under section 203 of the Highway Safety Act of 1973 shall be available for projects under section 130 of title 23, United States Code.

TECHNICAL AMENDMENTS

SEC. 140. (a) Title 23, United States Code, is amended as follows:

(1) The tables of sections for chapters 1, 3, and 4 are amended by (A) striking:

"118. Availability of sums apportioned."
"127. Vehicle weight and width limitations—Interstate System."
"133. Repealed."
"146. Repealed."
"148. Development of a national scenic and recreational highway."
"151. Pavement marking demonstration program."
"155. Access highways to public recreation areas on certain lakes."
"156. Highways crossing Federal projects."
"213. Rama Road."

and

"219. Safer off-system roads.",

and by (B) inserting in lieu thereof, respectively,

"118. Availability."
"127. Vehicle weight limitations—Interstate System."
"133. Strategic highway research program."
"146. Carpool and vanpool projects."
"148. Repealed."
"151. Repealed."
"155. Repealed."
"213. Repealed."

and

"219. Repealed."

and by (C) adding

"159. Federal-aid Interstate-primary program."
"160. Income from right-of-way."

and

"409. Reports, surveys; disclosures; admission as evidence.".

(2) Section 101(a) is amended by striking the definition of "park road" and inserting in lieu thereof "The term 'park road' means a public road that is located within, or provides access to, an area in the national park system, with title and maintenance responsibilities vested in the United States.".

(3) Section 106(c) is amended by striking "10" and inserting in lieu thereof "15" and by striking the second sentence.

(4) Section 107(b) is amended by striking "under section 108(b) of the Federal-Aid Highway Act of 1956" and inserting in lieu thereof "for Interstate construction or for the Interstate-primary program".

(5) Section 113 is amended by striking out "August 30, 1935" and inserting in lieu thereof "March 3, 1931" and by striking out "267a" and inserting in lieu thereof "276a".

(6) Section 115(a)(1) is amended by striking "interstate funds," and inserting in lieu thereof "Interstate-primary program funds," and by striking "funded under section 104(b)(5) of this title".

(7) Section 121(d) is amended by striking out "10" and inserting in lieu thereof "15", and by striking out the third sentence.

(8) The first sentence of section 122 is amended by inserting "or for substitute highway projects" before "and the retirement".

(9)(A) Section 125(b) is amended by striking out "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," each place it appears and inserting in lieu thereof "the Federal-aid highway systems, including the Interstate System".

(B) Section 125(c) is amended by striking out "routes functionally classified as arterials or major collectors" and inserting in lieu thereof "on any of the Federal-aid highway systems".

(10) Section 137(f)(1) is amended by striking "104(b)(5)(B)" and inserting in lieu thereof "104(d)(1)".

(11) Section 141(d) is amended by striking "104(b)(5)" and inserting in lieu thereof "104(d)(1)" the two places "104(b)(5)" appears and by inserting "-primary" after the word "Interstate".

(12)(A) Section 142(a)(1) is amended by (iii) striking "104(b)" and inserting in lieu thereof "104(d)".

(B) 142(a)(2) is amended by striking "104(b)(6)" the three places it appears and inserting in lieu thereof "104(d)(3)" in each place.

(C) Section 142(b) is amended by striking "paragraph (5) of subsection (b) of section 104" and inserting in lieu thereof "section 104(d)(1)".

(D) Section 142(c) is amended by striking "104(b)(6)" the two places it appears and inserting in lieu thereof in each place "104(d)(3)".

(13) Section 144(i) is amended by striking out the period at the end and inserting in lieu thereof "to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.".

(14) Section 146 is amended by striking "104(b)(1), 104(b)(2), and 104(b)(6)" and inserting in lieu thereof "104(d) (1), (2), and (3)".

(15) Section 148, 151, 155, 156, 213, and 219 are repealed.

(16) Section 150 is amended by striking "(6) of subsection (b)" in two places and inserting in lieu thereof in each place "(3) of subsection (d)".

(17)(A) Section 152(e) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(B) Section 152(g) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the

House Committee on Public Works and Transportation".

(18)(A) Section 154(e) is amended—

(i) by striking out "criteria which takes" and inserting in lieu thereof "criteria which take";

(ii) by inserting after "posted" the following: "on January 1, 1983,"; and

(iii) by inserting before "in accordance with" the following: ", and on highways built after such date with speed limits posted at fifty-five miles per hour,".

(B) Section 154(f) is amended by striking "each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal years, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years." and inserting in lieu thereof "sections 104(d)(1)(C), (2), and (3) of this title in an amount of up to 10 percent of the amount to be apportioned for the following fiscal year.".

(19)(A) Section 158(a)(1) is amended by striking "each of the sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1986".

(B) Section 158(a)(2) is amended by striking "each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d)(1), (2), and (3) of this title on October 1, 1987."

(20)(A) The second sentence of section 204(b) is amended by inserting "the Secretary or" before the "Secretary of the Interior".

(B) Section 204(e) is amended by striking "88 Stat. 2205" and inserting in lieu thereof "88 Stat. 2203".

(21) Section 210(g) is amended by striking "Commerce" and inserting in lieu thereof "Transportation".

(22) Subsection (a) of section 215 of title 23, United States Code, is amended by striking from the first sentence the words "and American Samoa" and inserting in lieu thereof "American Samoa, and the Commonwealth of the Northern Mariana Islands".

(23) Section 217 is amended by striking "paragraphs (1), (2), and (6) of section 104(b)" the two

places it appears and inserting in lieu thereof "sections 104(d)(1), (2), and (3)".

(24)(A) Section 307(c)(3) is amended by striking "(1), (2), and (3) of section 104(b)" and inserting in lieu thereof "(1) and (2) of 104(d)".

(B) Section 307(c)(5) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(C) Section 307(e) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Environment and Public Works Committee and the House Committee on Public Works and Transportation".

(25) Section 311 is amended by striking "(b)" and inserting in lieu thereof "(d)".

(26) Section 315 is amended by striking "204(d), 205(a), 207(b) and 208(c)" and inserting in lieu thereof "204(f) and 205(a)".

(27) Section 401 is amended by striking "and American Samoa." and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands.".

(28)(A) Section 402(c) is amended by (i) striking "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such" and inserting in lieu thereof "Such", by (ii), striking "After December 31, 1969, the" and inserting in lieu thereof "The", and by (iii) striking "and American Samoa" and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands".

(B) The last sentence of section 402(j) is amended by striking out "chapter" and inserting in lieu thereof "section".

(b)(1) Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by (A) inserting "and" before "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987", by (B) inserting a period after "1987", and by (C) striking ", and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1990.".

(2) Section 108(d) of the Surface Transportation Assistance Act of 1982 is amended by striking "this title," and inserting in lieu thereof "title 23, United States Code,".

(3) Section 163 of the Surface Transportation Assistance Act of 1982 is amended by striking "appropriated" and inserting in lieu thereof "apportioned".

(4) Section 163(o) of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(o) The Secretary of Transportation shall make biennial reports and a final report to the President, the Senate Committee on Environment and Public Works, and the House Committee on Public Works and Transportation with respect to activities pursuant to this section."

(5) Section 103(c) of the Federal-Aid Highway Act of 1978 is amended by striking "Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

EFFECTIVE DATE

SEC. 141. Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

○